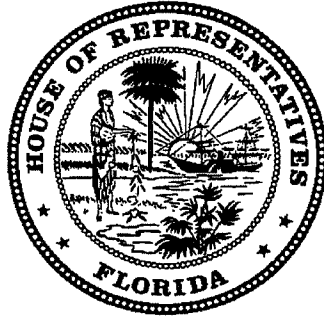


Finance and Tax Committee

**Thursday, February 17, 2011
1:00 p.m.**

Morris Hall



Finance and Tax Committee

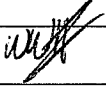
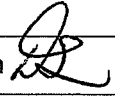
AGENDA

February 17, 2011
2:00 p.m. – 4:00 p.m.
Morris Hall

- I. Call to Order/Roll Call
- II. Consideration of the following bill(s):
HB 7005 Unemployment Compensation by Economic Development
& Tourism Subcommittee, Holder
- III. Special District Project, Discussion
- IV. Final Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7005 PCB EDTS 11-01 Unemployment Compensation
SPONSOR(S): Economic Development & Tourism Subcommittee, Holder
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee	7 Y, 4 N	Kruse	Tinker
1) Finance & Tax Committee		Wilson 	Langston 
2) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill addresses aspects of the state's unemployment compensation (UC) system related to a claimant's state and federal benefits, qualifications to receive state benefits, appeal of a benefit determination, and employer UC taxes.

Related to a claimant's state and federal benefits, the bill:

- Ties a UC claimant closer to the workforce system by requiring a claimant, at the time an application for benefits is undertaken, to complete an initial skills review which results are reported to the workforce system;
- Matches up state law with federal law changes to allow for federally-funded extended benefits to be drawn down to the unemployed;
- Reduces the number of available benefit weeks and ties the number of available benefit weeks to the unemployment rate, meaning the higher the unemployment rate the greater the number of available benefit weeks and vice-versa.

Relating to qualification for benefits, the bill:

- Revises how employee misconduct is determined and defined by revising standards of statutory construction and review, and specifying certain forms of misconduct such as chronic absenteeism or tardiness;
- Expands when an employee is disqualified from benefits related to committing a crime connected with work so that the crime does not have to be punishable by imprisonment for it to be used for disqualification, and specifies that a claimant in prison is disqualified from benefits.

Regarding appeals of benefit determinations, the bill:

- Codifies certain agency rules related to the exclusion of evidence that is irrelevant or repetitious, and revises the admissibility of hearsay evidence to allow it to be used to establish a fact under certain circumstances;
- Allows a claimant to file an appeal of a benefit determination made by the Unemployment Appeals Commission in the appellate court near the claimant.

Relating to employer taxes, the bill:

- Reduces most employers' tax rates by revising their benefit ratio calculation downward 10% which is used to compute their ultimate tax rate;
- Allows employers to continue to have the option to pay their UC taxes in installments over the course of the year in 2012, 2013, and 2014.

The legislation reduces taxes in 2011 and is expected to do so in subsequent years. At present, estimates of the net impact on taxes and the trust fund are being developed by the Office of Economic & Demographic Research.

This bill will take effect upon becoming a law, unless otherwise specified within the bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7005.FTC.DOCX

DATE: 2/14/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background:

Florida's businesses and out-of-work residents continue to face financial hardship due to the state's economic conditions. In 2010, the Department of Revenue (DOR) reported that 75,832 employers went out of business. Florida's unemployment rate has remained at or near 12 percent for the past year. These conditions have placed unprecedented stress on the unemployment system causing the Unemployment Trust Fund to become insolvent in August 2009. Since that time, Florida has borrowed over \$2 billion from the federal government to pay benefit claims. Further, the unemployment tax on Florida's businesses has increased substantially, from \$8.40 per employee in 2009 to \$72.10 per employee in 2011 for employers paying the minimum UC tax rate.

Federal-State Unemployment Insurance Program

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. The program is administered as a partnership of the federal government and the states. There are 53 state programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

The individual states collect UC payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).¹ States are permitted to set eligibility conditions for UC benefit recipients, the amount and duration of benefits, and the state tax structure so long as the state provisions are not in conflict with FUTA or Social Security Act requirements. Florida's UC program was created by the Legislature in 1937 as part of the national unemployment insurance system.² Florida's UC system is funded solely by employers who pay federal and state UC taxes, and is provided at no cost to the workers who receive the benefits.

Program Administration

The Agency for Workforce Innovation (AWI) is the agency responsible for administering Florida's UC laws.³ AWI contracts with the Department of Revenue to provide unemployment tax collections services.

The United States Department of Labor (USDOL) provides AWI with administrative resource grants from the taxes collected from employers pursuant to FUTA. These grants are used to fund the operations of the state's UC program. Florida received a base grant of \$81.1 million for federal FY 2010 and USDOL estimates that Florida's base grant for federal FY 2011 is \$80.2 million. These funds finance the processing of claims for benefits by AWI, state unemployment tax collections performed by the Department of Revenue, appeals conducted by AWI and the Unemployment Appeals Commission, and related administrative functions.

¹ FUTA is codified at 26 U.S.C. 3301-3311.

² Chapter 18402, L.O.F.

³ Sections 20.50 and 443.171, F.S.

AWI administers Florida's UC laws through its Office of Unemployment Compensation Services. The Office of Unemployment Compensation Services consists of the Unemployment Compensation Benefits Section, the Benefits Payment Control Section, and the Office of Appeals. The Unemployment Compensation Benefits Section handles initial claims, questions about unemployment benefits, and other related issues. The Benefits Payment Control Section monitors the payment of unemployment benefits in an effort to detect and deter overpayment and to prevent fraud. The Office of Appeals holds hearings and issues decisions to resolve disputed issues related to eligibility and claims for unemployment compensation and the payment and collection of unemployment compensation taxes.

The Office of Unemployment Compensation Services also administers special unemployment compensation programs, such as disaster unemployment assistance, trade adjustment assistance, and UC for ex-service members and federal civilian employees.

Benefit Structure

State UC taxes are deposited into the UC Trust Fund to pay benefits. Qualified claimants may receive state UC benefits equal to 25 percent of their wages, not to exceed \$7,150 in a benefit year.⁴ Benefits range from a minimum of \$32 to a maximum weekly benefit amount of \$275 for up to 26 weeks, depending on the claimant's length of prior employment and wages earned.⁵ To receive UC benefits, claimants must meet certain monetary and non-monetary eligibility requirements.⁶ 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.

Monetary Eligibility

Pursuant to s. 443.111(2), F.S., in order to establish a benefit year from which UC benefits can be paid, an individual must:

- Have been paid wages in two or more calendar quarters in the base period; and
- Have minimum total base period wages equal to the high quarter wages multiplied by 1.5, but at least \$3,400 in the base period.

The base period is the first four of the last five completed calendar quarters immediately before the individual filed a valid claim for benefits.⁷ The most recent quarter of work (or fifth completed calendar quarter) is not used to determine monetary eligibility and cannot be credited toward the two-quarter requirement or the \$3,400 requirement.

Non-Monetary Determinations

The state's UC laws contemplate that a claimant was employed in the capacity of an employee, and not an independent contractor. A claimant must be unemployed due to layoffs or otherwise through no fault of their own to be eligible for benefit payments.

An individual may be disqualified from receiving UC benefits for voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work. The term "good cause" includes only that cause attributable to the employer or which consists of illness or disability of the individual requiring separation from work. An individual who voluntarily quits work for a good cause not related to any of the conditions specified in statute will be disqualified from receiving benefits.⁸

Other circumstances under which an individual would be disqualified from receiving unemployment compensation benefits include:⁹

⁴ Section 443.111(5), F.S.

⁵ Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday.

⁶ Section 443.091(1), F.S.,

⁷ Section 443.036(7), F.S.

⁸ Section 443.101, F.S.

⁹ Section 443.101, F.S. The statute specifies the duration of the disqualification depending on the reason for the disqualification.

- Failing to apply for available suitable work when directed by AWI or the one-stop career center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;
- Receiving remuneration in the form of wages, or compensation for temporary total disability or permanent total disability under the workers' compensation law of any state with a limited exception;
- Receiving benefits from a retirement, pension, or annuity program with certain exceptions;
- Receiving unemployment compensation from another state;
- Termination from employment for a crime punishable by imprisonment, or any dishonest act in connection with his or her work;
- Making false or fraudulent representations in filing for benefits;
- Discharge from employment due to drug use;
- Involvement in an active labor dispute which is responsible for the individual's unemployment; or
- Illegal immigration status.

Wages in lieu of notice is income deemed to have been earned in connection with employment. Under current law, severance pay is not regarded as earned income, and therefore is not offset against benefits.

An individual is not disqualified for voluntarily leaving temporary work to return immediately when called to work by his or her former permanent employer that temporarily terminated his or her work within the previous 6-calendar months. Additionally, an individual is not disqualified for voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders. Claimants who also attend training approved by AWI, or approved under s. 236(a)(1) of the Trade Act of 1974, may not be denied benefits for any week in which he or she was in training, provided that the claimant satisfies eligibility conditions set in rule.¹⁰

Misconduct

States have established detailed interpretations of what constitutes misconduct for the purpose of non-monetary eligibility.¹¹ Under s. 443.036(29), F.S., Florida disqualifies claimants that demonstrate:

- Conduct that is a willful or wanton disregard of an employer's interests and the standards of behavior which the employer has a right to expect of the employee; or
- Carelessness or negligence to a degree or recurrence that manifests culpability, wrongful intent, or evil design or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.

These two descriptions of behavior are considered to stand alone as independent types of misconduct.¹²

Reemployment

To maintain eligibility for benefits, an individual must also be ready, willing, and able to work and actively seeking work.¹³ An individual must make a thorough and continued effort to obtain work and take positive actions to become reemployed. Claimants are automatically registered with their local One-Stop Career Center when their claims are filed.

¹⁰ Rule 60BB-3.022, F.A.C.

¹¹ In determining what constitutes misconduct, many states rely on the definition established in the 1941 Wisconsin Supreme Court Case, Boynnton Cab Co. v. Neubeck, 296 N.W. 636 (Wis. 1941)

¹² Trinh Trung Do v. Amoco Oil Company, 510 So.2d 1063 (Fla. 4th DCA 1987)

¹³ Section 443.036(1) and (6), F.S., provide the meaning of the phrases "able to work" and "available for work" as:

- "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.

Additionally, AWI has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work in Rule 60BB-3.021, F.A.C.

The One-Stop Career Centers 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 the Employ Florida Marketplace with information about employment services or available jobs.¹⁴ Additionally, a claimant may be selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).¹⁵

Statutory Construction

Generally, through court interpretation, most states construe their unemployment statutes in favor of a claimant. Courts have held that the unemployment laws are remedial in nature, and thus should be liberally and broadly construed.¹⁶ Section 443.031, F.S., states that ch. 443, F.S., "shall be liberally construed in favor of a claimant of unemployment benefits who is unemployed through no fault of his or her own." Remedial statutes are those that provide a remedy or improve or facilitate remedies already existing for the enforcement of rights and the redress of injuries. Florida courts have held that the unemployment statutes are "remedial, humanitarian legislation."

"[A] statute enacted for the public benefit should be construed liberally in favor of the public even though it contains a penal provision. In this posture a reasonable construction should be applied giving full measure to every effort to effectuate the legislative intent."¹⁷

Determination of Eligibility

Based upon information provided with filed claims for benefits, AWI makes an initial determination on entitlement to benefits. A determination becomes final after 20 days have expired.

Appeals

Under s. 443.151(4), F.S., a claimant may appeal an adverse decision to an appeals referee within 20 days after the date of mailing of the notice. Unless the appeal is withdrawn, the appeals referee will set up a hearing between the employer and employee. The procedures and evidentiary rules for the hearing are governed by ch. 120, F.S.; and rule 60BB-5.024. The rule does not allow irrelevant, immaterial, and unduly repetitious evidence and the rule and s. 120, F.S., both do not allow hearsay evidence to support a finding of fact unless it would be admissible over an objection in civil court.

The Unemployment Appeals Commission is administratively housed in the AWI, but is a quasi-judicial administrative appellate body independent of AWI.¹⁸ The commission is 100 percent federally funded and consists of a three member panel that is appointed by the governor. It is the highest level for administrative review of contested unemployment cases decided by the Office of Appeals referees. The Unemployment Appeals Commission can affirm, reverse, or remand the referee's decision for further proceedings. A party to the appeal who disagrees with the commission's order may seek review of the decision in the Florida district courts of appeal.¹⁹

¹⁴ Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and AWI. It provides job-matching and workforce resources. <https://www.employflorida.com>

¹⁵ 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. 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.

¹⁶ See *J.W. Williams v. State of Florida, Department of Commerce*, 260 So.2d 233 (1st DCA, 1972); and *Williams v. Florida Industrial Commission*, 135 So.2d 435 (3rd DCA, 1961).

¹⁷ *City of Miami Beach v. Berns*, 245 So.2d 38, 40 (Fla. 1971).

¹⁸ Section 20.50(2)(d), F.S. "The Unemployment Appeals Commission, authorized by s. 443.012, F.S., is not subject to control, supervision, or direction by the Agency for Workforce Innovation in the performance of its powers and duties but shall receive any and all support and assistance from the agency that is required for the performance of its duties."

¹⁹ Section 443.151(4)(c), (d), and (e), F.S.

Temporary Extended Benefits

In 2009, the Legislature enacted a temporary extended benefits program for unemployed individuals in order to qualify for federal funds.²⁰ Under this program, the federal government pays 100 percent of temporary extended benefits to former private sector employees.

Florida already had an extended benefits program in statute,²¹ but in order to participate in the federal program, Florida was able to enact a temporary extended benefits program with an alternate trigger rate based upon the average total unemployment rate (TUR). Florida's regular extended benefits program triggers "on" based upon a higher individual unemployment rate (IUR). The federal funds are paid from a separate federal account and do not affect the balance of Florida's UC Trust Fund.

Florida's temporary extended benefits program was effective between February 1, 2009, and April 5, 2010.²² In July of 2010, Congress extended this program retroactively from April 6, 2010, to November 30, 2010. Because the Legislature was not in session, Governor Crist signed an executive order implementing the state program.²³ On December 17, 2010, Congress extended this program a second time with the enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the 2010 Tax Act). This extension provides up to 20 weeks of 100% federally-funded extended benefits for former private-sector employees through January 4, 2012. Governor Crist signed an additional executive order on December 17, 2010 extending the state program after the federal bill was signed into law.

Extended benefits for former state and local employees do not qualify for federal funding, due to the fact that these entities are self-insured and the federal law does not allow for their participation in federal sharing. The temporary extended benefits for these former employees must be paid by the governmental entity. The cost for the current extension is estimated to total \$18.4 million, approximately \$5.4 million from state funds and \$13 million from local government funds. In order to participate in federal sharing, the temporary extended benefits program had to encompass unemployed individuals of both the private and public sectors.

Emergency Unemployment Compensation

Emergency unemployment compensation (EUC) is specially extended benefits available to individuals who have exhausted all rights to regular state benefits. The benefits of this program are 100 percent federally funded and do not impact Florida's UC Trust Fund balance. Under the 2010 Tax Act, Congress extended the EUC program eligibility window through January 1, 2012. The EUC extension provides 4 tiers of benefits totaling up to 53 weeks of benefits. When the extension expires, individuals receiving EUC are locked into the current tier of benefits they are in, and may collect any remaining benefits in that tier until June 9, 2012. The AWI estimate for total payments is \$3.5 billion.

Tax Structure

Through the Federal Unemployment Tax Act (FUTA), the IRS levies an unemployment tax of 6.2% on employers. However, employers in Florida currently receive a 5.4% credit against that tax, resulting in an effective federal tax rate of 0.8% applied to taxable wages. To receive the maximum federal tax credit, Florida has established a taxable wage base for state UC taxes at least equal to the federal taxable wage base – currently \$7,000.²⁴ Employers pay quarterly taxes on the first \$7,000 of each employee's annual wages.²⁵

²⁰ Chapter 2009-99, L.O.F. Temporary extended benefits was originally created and funded by the American Recovery and Reinvestment Act of 2009. Section 2005, Public Law No. 111-5.

²¹ Section 443.1115, F.S.

²² The temporary extended benefits were to be available for 13 to 20 weeks, depending on the average total rate of unemployment. Because of Florida's high unemployment rate, temporary extended benefits were available for the 20 week time period.

²³ Public Law No. 111-312 (H.R. 4853)

²⁴ Section 443.1217(2), F.S.

²⁵ Section 443.131(1), F.S.

State Unemployment Compensation Tax

In addition to FUTA, Florida employers pay a state UC tax which funds the state Unemployment Compensation Trust Fund, an account used to pay weekly benefits. Under current law, employers pay quarterly state UC taxes on the first \$7,000 of each employee's annual wages. However, the Legislature can and has raised the taxable wage base above the federal minimum, most recently in the 2009 regular session. An employer's initial state tax rate is 2.7 percent.²⁶ After an employer is subject to benefit charges for 8-calendar quarters, the standard tax rate is 5.4 percent, but may be adjusted down to a low of 0.1 percent.²⁷ The adjustment in the tax rate is determined by calculating a statutory formula that incorporates the benefit ratio, socialized costs, and the trust fund factor.

Trust Fund Triggers

Florida's tax calculation method is closer to a "pay as you go" approach, in which taxes increase rapidly after a surge in benefit costs. Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. This effect triggers the positive fund balance adjustment factor, which consequently increases tax rates for all employers. Conversely, when unemployment and benefit charges are low, the negative fund balance adjustment factor triggers, and tax rates for employers are reduced accordingly.²⁸

The basis for the adjustment factors is the level of the trust fund on September 30th of each calendar year compared to the taxable payrolls for the previous year. Each adjustment factor remains in effect until the balance of the trust fund rises above or falls below the respective trigger percentage. However, CS/HB 7033 enacted in the 2010 Session delayed the calculation of the positive adjustment tax rate factor until 2012.

Installment Payment Option

Current law allows employers to make their 2010 and 2011 UC tax payments in quarterly installments without interest or penalties as long as the employer makes the quarterly filing and payment according to a new schedule in s. 443.141(1)(d), F.S. However, any penalties, interest, or fees that were due prior to this new schedule will continue to accrue as well as on any missed filings under the new schedule. The Department of Revenue is authorized to charge an annual fee of up to \$5 to employers that choose to participate in the installment payment option. This annual administrative fee was estimated to generate \$100,000 in both FY 2009-10 and FY 2010-11 for the Department of Revenue to administer the quarterly payment plan.²⁹

Unemployment Compensation Trust Fund

Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. The federal government allows for advances to be made to state UC Trust Funds to pay UC benefits. On August 24, 2009, the Florida UC Trust Fund balance fell to \$0 and federal advance monies were drawn down. As of January 2011, over \$2 billion has been drawn down. Unless the federal advances are repaid prior to November 10, 2011, Florida employers will most likely lose a portion of their federal UC tax credit in 2011. Employers lose 0.3% of the credit for each year the loan has been outstanding. Any loss of the credit goes to repay the outstanding loan balance.

Loans to the UC trust fund also accrue interest charges and payments are due no later than September 30th each year. The American Recovery and Reinvestment Act of 2009 effectively waived interest accrued on advances until December 31, 2010, but interest began to accrue on unpaid loans on January 1, 2011. In order to repay interest that comes due in September 2011, employers will pay an interest assessment separate from their unemployment taxes which will be due June 2011. The interest

²⁶ Section 443.131(2)(a), F.S.

²⁷ Section 443.131(2)(b), F.S.

²⁸ Currently, the negative adjustment factor is not available until January 1, 2015, and then not in any calendar year in which a federal advance, or loan, from the federal government is still in repayment for the principal amount of the loan.

²⁹ The annual employer administrative fees generated are based on a Revenue Estimating Conference from June 3, 2010.

<http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2010/pdf/page%2047-59.pdf>

(last visited on February 2, 2011)

due is projected to be \$61.5 million. If the interest is not paid when due, the federal government will not certify the state program and can withhold all administrative funding.

Payroll Service Providers

Payroll Service Providers can be generally defined as an accounting business whose main focus is the preparation and management of payroll for other businesses. Payroll service providers that represent clients on unemployment tax matters before the Department of Revenue must file a power of attorney for each of their clients. Under current law, a provider with at least 500 clients has the option to file a single memorandum of understanding with the Department in lieu of the 500 individual powers of attorney.³⁰ The Department has recommended that the provider requirement to have at least 500 clients be reduced to 100 clients to allow the Department to enter into more memorandums of understanding and reduce the number of powers of attorney being filed.

Changes Made By the Bill:

The bill addresses several topics related to unemployment compensation: state and federal benefits; revising how an employee's behavior affects benefit determinations; revising appeals of benefit determinations; and revising employers' UC tax rates.

State and Federal Benefits

Sections 5 and 7 of the bill make several changes to a claimant's state benefits. Section 5 requires a claimant to complete an initial skills review at the time of completing an application for UC benefits. The initial skills review administrator must report the results of the review to the Agency for Workforce Innovation and the appropriate workforce board or one-stop career center. The workforce board or one-stop career center could then determine if the claimant required further job skills or job search assistance.

Section 7 reduces the maximum number of benefit weeks from 26 to 20 and the associated benefit total amount available from \$7,150 to \$5,500 (maximum weekly benefit amount is \$275 times 20 weeks equals \$5,500). In conjunction with this change, the bill creates a definition of "Florida average unemployment rate" which is calculated by looking at the most recent year's third quarter and averaging the statewide unemployment rate for those three months. That unemployment rate calculation is then used to determine how many weeks a claimant could receive, depending on the unemployment rate. The bill provides that if the Florida average unemployment rate is 9% or higher, a claimant is eligible for up to a maximum of 20 weeks. If the Florida average unemployment rate is 5% or below, the maximum number of available weeks is 12. Each 0.5% increment in the unemployment rate above 5% adds an additional week of benefits.

The immediate effect of reducing the number of benefit weeks from 26 to 20 is muted by the current availability of federal UC benefits. When a claimant exhausts his or her state benefits, the claimant will automatically move into the first federal tier at the weekly amount the claimant was receiving under their state benefit. Four federal tiers and a period of temporary extended benefits are available for a potential period of 58 weeks. Combined with the total number of state benefits, 20 weeks under the provisions of the bill, the total state and federal benefit weeks is 78. Under federal law, eligibility for the federal tiers is scheduled to expire January 1, 2012, and any tier a claimant is in after that date is phased out completely by June 9, 2012.

Sections 12 and 13 match up state law with federal changes made last year to extend federally-funded extended benefits which will provide additional weeks of unemployment compensation to the unemployed.

Employee Behavior

Sections 2, 3, and 6 address employee behavior. Section 2 revises the rule of construction for UC statutes to be construed on a neutral basis between an employer and an employee. Current law provides that the statutes are to be liberally construed in favor of a claimant.

³⁰ Section 213.053(4), F.S.

Section 3 addresses employee misconduct specifically. The bill revises the definition of misconduct by changing the high standard for an employer to prove, "willful or wanton" disregard, to a lower standard, "conscious" disregard. The effect of this change is to reduce the burden of proof on an employer when attempting to prove employee misconduct was the reason for the employment separation. A finding of employee misconduct disqualifies an employee from receiving benefits. However, the employer must still show that the employee had a level of awareness that their conduct disregarded the employer's interests or disregarded reasonable standards of behavior that the employer should expect from the employee. The bill also removes "evil design" in the second form of behavior that can be classified as misconduct. Research is unclear as to how an employer could prove an employee had an "evil design" and what might constitute that term.

Section 3 also expands the definition of misconduct to include actions that can jeopardize a business' ability to remain open, chronic employee behavior such as absenteeism or tardiness, and violations of employer rules, with certain rights granted to an employee who is unaware of or could not comply with such rule. Misconduct that could jeopardize an employer's ability to remain open is defined as a willful and deliberate violation of a state standard or regulation that could cause the employer to be sanctioned or have its license or certification suspended by the state. The "willful and deliberate" standard is a higher standard for an employer to prove than the "conscious" disregard standard. The bill requires that for chronic absenteeism or tardiness to be considered misconduct the employee must deliberately violate a known policy of the employer or have one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence. The bill provides that a violation of an employer's rules is misconduct, unless:

- the employee shows that the employee could not know and could not reasonably know of the rule's requirements,
- the rule is not lawful or reasonably related to the job environment and performance, or
- the rule is not fairly or consistently enforced.

This change means that a violation of an employer's rules, whether in written form or orally provided, can be the basis for finding misconduct. However, the employee will be given an opportunity to provide evidence as to why the rule was not followed.

Section 6 also deals with employee behavior and what may disqualify an employee from an award of benefits. Currently, if an employee voluntarily leaves work without "good cause," the employee is disqualified from an award of benefits. The bill revises the term "good cause" to require that "good cause" attributable to the employer must be something that would compel a reasonable employee to cease his or her work. The bill further expands disqualification from an award of benefits to include:

- being fired for any crime committed in connection with work for which the employee was convicted or entered a plea of guilty or nolo contendere (current law requires the crime to be punishable by imprisonment),
- committing a crime that affects an employee's ability to perform his or her work,
- being imprisoned.

In addition, the bill provides that an employee is disqualified from benefits in an amount based on a formula if the employee has received severance pay from an employer.

Appeals of Benefit Determinations

Section 10 revises a claimant's appeals process. The bill codifies the Agency for Workforce Innovation's current rule that does not allow irrelevant, immaterial, or unduly repetitious evidence whether or not the evidence would have been admissible in a court. Currently, hearsay evidence may only be used to support a finding of fact if it would be admissible over an objection in a civil court. The bill allows hearsay evidence to be used in support of other evidence and, additionally, allows hearsay evidence to support a finding of fact if the parties have time to review the evidence prior to the hearing and the appeals referee finds, after review, that the hearsay evidence is appropriate under the circumstances. The bill also allows an appeal of an Unemployment Appeals Commission order to be made in the appellate district where the claimant resides or the job separation arose. If the appeal is filed with the Commission, the Commission must file the notice in the district court of appeal in which

the order was issued. This revision will provide more convenience for a claimant since the appeal proceeding may be located closer to the claimant's home or where the job separation occurred.

Section 11 of the bill provides that the date on the Agency document mailed by AWI or its tax collection service provider (DOR) to a claimant is considered the date the document was mailed, absent any evidence provided by the claimant to the contrary. If there is a controversy regarding when a document is mailed, a claimant could produce the envelope in which the document was mailed to show the postmark.

Employers UC Tax Rates

Sections 8 and 9 address employers tax rates and quarterly payments of the UC tax bills. Section 8 reduces most employers' tax rates by revising their benefit ratio calculation downward 10% which is used to compute their ultimate tax rate. Since the look back for computing an employer's tax rate is the past three years of experience, this change will have an effect on rates over the next several years. This change is also a method to immediately approximate the longer term effects of the bill's benefit changes on tax rates (See Fiscal Comments section below). Section 9 provides employers the option to pay their UC taxes in installments in the 2012, 2013, and 2014 tax years.

Other Bill Provisions:

Section 1 of the bill changes the number of clients a payroll service provider must represent from 500 to 100 in order to enter into a memorandum of understanding with the Department of Revenue which will reduce the number of powers of attorney that must be filed with the Department by a payroll service provider.

Section 14 states that the bill fulfills an important state interest and section 15 states that the bill takes effect upon becoming law, unless otherwise specified in the bill.

B. SECTION DIRECTORY:

- Section 1. Amends s. 213.053, F.S., relating to payroll service providers filing powers of attorney with the Department of Revenue.
- Section 2. Amends s. 443.031, F.S., relating to rules of construction.
- Section 3. Amends s. 443.036, F.S., relating to employee misconduct.
- Section 4. Amends s. 443.041, F.S., relating to waiver of rights, to correct a cross-reference.
- Section 5. Amends s. 443.091, F.S., relating to a UC claimant completing an initial skills review.
- Section 6. Amends s. 443.101, F.S., relating to disqualification for benefits.
- Section 7. Amends s. 443.111, F.S., relating to payment of benefits.
- Section 8. Amends s. 443.131, F.S., the calculation of an employer's benefit ratio used to determine the employer's tax rate.
- Section 9. Amends s. 443.141, F.S., relating to employer quarterly tax payments for 2012, 2013, and 2014.
- Section 10. Amends s. 443.151, F.S., relating to procedures concerning claims.
- Section 11. Amends s. 443.171, F.S., relating to evidence of mailing.
- Section 12. Amends s. 443.1117, F.S., relating to extended benefits.
- Section 13. Providing for applicability of claims under the provisions of s. 443.1117, F.S.

Section 14. Provides that the bill fulfills an important state interest.

Section 15. Provides that unless otherwise specified in the bill, the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill provides for a \$5 per year administrative fee to participate in the installment payment program for UC taxes. The revenues generated from the administrative fee depend on the number of businesses that elect to participate. In 2010, out of 450,000 employers, 10,342 employers elected to participate in the UC installment payment program (representing a total of \$127 million in UC taxes). However, due to the expected significant increases in the UC tax in future years under current law, more employers may elect to participate in the installment option.

Also see Fiscal Comments.

2. Expenditures:

None. (See Fiscal Comments)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None. (See Fiscal Comments)

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The reduction in employer taxes and the reduction in number of benefit weeks will reduce costs on businesses in the state which may allow them to make investments and hire additional employees.

D. FISCAL COMMENTS:

Compared to current law, the legislation reduces taxes in 2011 and is expected to do so in subsequent years. The lower taxes will generally be accompanied by and attributable to lower benefit payments. Consequently, the impact of the lower taxes on the trust fund balance and on the need to borrow from the federal government will be partially or completely offset by lower outflows from the fund (i.e. benefit payments). At present, estimates of the net impact on the trust fund are being developed by the Office of Economic & Demographic Research (EDR).

Extended benefits for former state and local employees do not qualify for federal funding due to the fact that these entities are self-insured and the federal law does not allow for their participation in federal sharing. The cost, incurred from the time Governor Crist issued his executive orders, are estimated to be \$5.4 million from state funds and \$13 million from local government funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill codifies Governor Crist's previously issued executive orders regarding temporary extended benefits. Costs associated with the extended benefits incurred by the state and local governments began December 17, 2010. To the extent this bill requires cities and counties to expend funds to pay state extended benefits for eligible former employees, the provisions of Section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (see section 13 of the bill) and one of the following relevant exceptions:

- a. Appropriate funds estimated at the time of enactment to be sufficient to fund such expenditures;
- b. Authorize a county or municipality to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- c. The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or
- d. The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

Similarly situated refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities. To whatever extent the bill requires expenditure of funds, the bill impacts all persons similarly situated, so that particular exception appears to apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
2 An act relating to unemployment compensation; amending s.
3 213.053, F.S.; increasing the number of employer payroll
4 service providers who qualify for access to unemployment
5 tax information by filing a memorandum of understanding;
6 amending s. 443.031, F.S.; revising provisions relating to
7 statutory construction; amending s. 443.036, F.S.;
8 revising definitions; revising the term "misconduct" to
9 include conduct outside of the workplace and additional
10 lapses in behavior; amending s. 443.041, F.S.; conforming
11 a cross-reference; amending s. 443.091, F.S.; requiring
12 that an applicant for benefits complete an initial skills
13 review; providing exceptions; amending s. 443.101, F.S.;
14 clarifying "good cause" for voluntarily leaving
15 employment; disqualifying a person for benefits due to the
16 receipt of severance pay; revising provisions relating to
17 the effects of criminal acts on eligibility for benefits;
18 amending s. 443.111, F.S.; providing a definition;
19 reducing the amount and revising the calculation of the
20 number of weeks of a claimant's benefit eligibility;
21 amending s. 443.131, F.S.; providing definitions; revising
22 an employer's unemployment compensation contribution rate
23 by certain factors; amending s. 443.141, F.S.; providing
24 an employer payment schedule for 2012, 2013, and 2014
25 contributions; amending s. 443.151, F.S.; revising
26 allowable forms of evidence in benefit appeals; revising
27 the judicial venue for reviewing commission orders;
28 amending s. 443.171, F.S.; specifying that evidence of

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 mailing an agency document is based on the date stated on
 30 the document; reviving, readopting, and amending s.
 31 443.1117, F.S., relating to temporary extended benefits;
 32 providing for retroactive application; establishing
 33 temporary state extended benefits for weeks of
 34 unemployment; revising definitions; providing for state
 35 extended benefits for certain weeks and for periods of
 36 high unemployment; providing applicability; providing that
 37 the act fulfills an important state interest; providing
 38 effective dates.

39
 40 Be It Enacted by the Legislature of the State of Florida:

41
 42 Section 1. Subsection (4) of section 213.053, Florida
 43 Statutes, is amended to read:

44 213.053 Confidentiality and information sharing.—

45 (4) The department, while providing unemployment tax
 46 collection services under contract with the Agency for Workforce
 47 Innovation through an interagency agreement pursuant to s.
 48 443.1316, may release unemployment tax rate information to the
 49 agent of an employer who, ~~which agent~~ provides payroll services
 50 for more than 100 ~~500~~ employers, pursuant to the terms of a
 51 memorandum of understanding. The memorandum of understanding
 52 must state that the agent affirms, subject to the criminal
 53 penalties contained in ss. 443.171 and 443.1715, that the agent
 54 will retain the confidentiality of the information, that the
 55 agent has in effect a power of attorney from the employer which
 56 permits the agent to obtain unemployment tax rate information,

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57 and that the agent shall provide the department with a copy of
58 the employer's power of attorney upon request.

59 Section 2. Section 443.031, Florida Statutes, is amended
60 to read:

61 443.031 Rule of ~~liberal~~ construction.—This chapter may not
62 ~~shall~~ be ~~liberally~~ construed to in favor or disfavor of a
63 claimant of unemployment benefits who is unemployed through no
64 fault of his or her own. Any doubt as to the proper construction
65 of this chapter shall be resolved in favor of conformity with
66 federal law, including, but not limited to, the Federal
67 Unemployment Tax Act, the Social Security Act, the Wagner-Peyser
68 Act, and the Workforce Investment Act.

69 Section 3. Subsections (6), (9), (29), and (43) of section
70 443.036, Florida Statutes, are amended to read:

71 443.036 Definitions.—As used in this chapter, the term:

72 (6) "Available for work" means actively seeking and being
73 ready and willing to accept suitable work ~~employment~~.

74 (9) "Benefit year" means, for an individual, the 1-year
75 period beginning with the first day of the first week for which
76 the individual first files a valid claim for benefits and,
77 thereafter, the 1-year period beginning with the first day of
78 the first week for which the individual next files a valid claim
79 for benefits after the termination of his or her last preceding
80 benefit year. Each claim for benefits made in accordance with s.
81 443.151(2) is a valid claim under this subsection if the
82 individual was paid wages for insured work in accordance with s.
83 443.091(1) (h) ~~(g)~~ and is unemployed as defined in subsection (43)
84 at the time of filing the claim. However, the Agency for

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85 Workforce Innovation may adopt rules providing for the
86 establishment of a uniform benefit year for all workers in one
87 or more groups or classes of service or within a particular
88 industry if the agency determines, after notice to the industry
89 and to the workers in the industry and an opportunity to be
90 heard in the matter, that those groups or classes of workers in
91 a particular industry periodically experience unemployment
92 resulting from layoffs or shutdowns for limited periods of time.

93 (29) "Misconduct," irrespective of whether the misconduct
94 occurs at the workplace or during working hours, includes, but
95 is not limited to, the following, which may not be construed in
96 pari materia with each other:

97 (a) Conduct demonstrating conscious ~~willful or wanton~~
98 disregard of an employer's interests and found to be a
99 deliberate violation or disregard of the reasonable standards of
100 behavior which the employer expects ~~has a right to expect~~ of his
101 or her employee. ~~or~~

102 (b) Carelessness or negligence to a degree or recurrence
103 that manifests culpability, wrongful intent, ~~or evil design~~ or
104 shows an intentional and substantial disregard of the employer's
105 interests or of the employee's duties and obligations to his or
106 her employer.

107 (c) Chronic absenteeism or tardiness in deliberate
108 violation of a known policy of the employer or one or more
109 unapproved absences following a written reprimand or warning
110 relating to more than one unapproved absence.

111 (d) A willful and deliberate violation of a standard or
112 regulation of this state by an employee of an employer licensed

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113 | or certified by this state, which violation would cause the
 114 | employer to be sanctioned or have its license or certification
 115 | suspended by this state.

116 | (e) A violation of an employer's rule, unless the claimant
 117 | can demonstrate that:

118 | 1. He or she did not know, and could not reasonably know,
 119 | of the rule's requirements;

120 | 2. The rule is not lawful or not reasonably related to the
 121 | job environment and performance; or

122 | 3. The rule is not fairly or consistently enforced.

123 | (43) "Unemployment" or "unemployed" means:

124 | (a) An individual is "totally unemployed" in any week
 125 | during which he or she does not perform any services and for
 126 | which earned income is not payable to him or her. An individual
 127 | is "partially unemployed" in any week of less than full-time
 128 | work if the earned income payable to him or her for that week is
 129 | less than his or her weekly benefit amount. The Agency for
 130 | Workforce Innovation may adopt rules prescribing distinctions in
 131 | the procedures for unemployed individuals based on total
 132 | unemployment, part-time unemployment, partial unemployment of
 133 | individuals attached to their regular jobs, and other forms of
 134 | short-time work.

135 | (b) An individual's week of unemployment commences only
 136 | after his or her registration with the Agency for Workforce
 137 | Innovation as required in s. 443.091, ~~except as the agency may~~
 138 | ~~otherwise prescribe by rule.~~

139 | Section 4. Paragraph (b) of subsection (2) of section
 140 | 443.041, Florida Statutes, is amended to read:

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141 443.041 Waiver of rights; fees; privileged
 142 communications.—

143 (2) FEES.—

144 (b) An attorney at law representing a claimant for
 145 benefits in any district court of appeal of this state or in the
 146 Supreme Court of Florida is entitled to counsel fees payable by
 147 the Agency for Workforce Innovation as set by the court if the
 148 petition for review or appeal is initiated by the claimant and
 149 results in a decision awarding more benefits than provided in
 150 the decision from which appeal was taken. The amount of the fee
 151 may not exceed 50 percent of the total amount of regular
 152 benefits permitted under s. 443.111(5) (b) ~~(a)~~ during the benefit
 153 year.

154 Section 5. Paragraphs (c) through (h) of subsection (1) of
 155 section 443.091, Florida Statutes, are redesignated as
 156 paragraphs (d) through (i), respectively, present paragraph (d)
 157 is amended, and paragraph (c) is added to that subsection, to
 158 read:

159 443.091 Benefit eligibility conditions.—

160 (1) An unemployed individual is eligible to receive
 161 benefits for any week only if the Agency for Workforce
 162 Innovation finds that:

163 (c) She or he has completed an initial skills review using
 164 an online education or training program within 14 days after
 165 making an initial claim for benefits. An online education or
 166 training program, such as that established in s. 1004.99, that
 167 is approved by the Agency for Workforce Innovation and designed

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168 to measure an individual's mastery level of workplace skills
169 meets the requirement of this paragraph.

170 1. This requirement does not apply to persons who are:

171 a. Non-Florida residents;

172 b. On a temporary layoff, as defined in s. 443.036(42);

173 c. Union members who customarily obtain employment through
174 a union hiring hall; or

175 d. Claiming benefits under an approved short-time
176 compensation plan as provided in s. 443.1116.

177 2. The administrator or operator of the online education
178 or training program must notify the Agency for Workforce
179 Innovation when the claimant completes the initial skills review
180 and must report the results of the claimant's initial skills
181 review to the regional workforce board or the one-stop career
182 center as directed by the regional workforce board for use for
183 reemployment services.

184 (e) ~~(d)~~ She or he is able to work and is available for
185 work. In order to assess eligibility for a claimed week of
186 unemployment, the agency shall develop criteria to determine a
187 claimant's ability to work and availability for work. However:

188 1. Notwithstanding any other provision of this paragraph
189 or paragraphs (b) and (f) ~~(e)~~, an otherwise eligible individual
190 may not be denied benefits for any week because she or he is in
191 training with the approval of the agency, or by reason of s.
192 443.101(2) relating to failure to apply for, or refusal to
193 accept, suitable work. Training may be approved by the agency in
194 accordance with criteria prescribed by rule. A claimant's
195 eligibility during approved training is contingent upon

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196 satisfying eligibility conditions prescribed by rule.

197 2. Notwithstanding any other provision of this chapter, an
 198 otherwise eligible individual who is in training approved under
 199 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
 200 determined ineligible or disqualified for benefits due to her or
 201 his enrollment in such training or because of leaving work that
 202 is not suitable employment to enter such training. As used in
 203 this subparagraph, the term "suitable employment" means work of
 204 a substantially equal or higher skill level than the worker's
 205 past adversely affected employment, as defined for purposes of
 206 the Trade Act of 1974, as amended, the wages for which are at
 207 least 80 percent of the worker's average weekly wage as
 208 determined for purposes of the Trade Act of 1974, as amended.

209 3. Notwithstanding any other provision of this section, an
 210 otherwise eligible individual may not be denied benefits for any
 211 week because she or he is before any state or federal court
 212 pursuant to a lawfully issued summons to appear for jury duty.

213 Section 6. Paragraph (a) of subsection (1) and subsections
 214 (2), (3), and (9) of section 443.101, Florida Statutes, are
 215 amended, and subsection (12) is added to that section, to read:

216 443.101 Disqualification for benefits.—An individual shall
 217 be disqualified for benefits:

218 (1)(a) For the week in which he or she has voluntarily
 219 left work without good cause attributable to his or her
 220 employing unit or in which the individual has been discharged by
 221 the employing unit for misconduct connected with his or her
 222 work, based on a finding by the Agency for Workforce Innovation.
 223 As used in this paragraph, the term "work" means any work,

224 | whether full-time, part-time, or temporary.

225 | 1. Disqualification for voluntarily quitting continues for
 226 | the full period of unemployment next ensuing after the
 227 | individual has left his or her full-time, part-time, or
 228 | temporary work voluntarily without good cause and until the
 229 | individual has earned income equal to or in excess of 17 times
 230 | his or her weekly benefit amount. As used in this subsection,
 231 | the term "good cause" includes only that cause attributable to
 232 | the employing unit that would compel a reasonable employee to
 233 | cease his or her work or which consists of the individual's
 234 | illness or disability requiring separation from his or her work.
 235 | Any other disqualification may not be imposed. An individual is
 236 | not disqualified under this subsection for voluntarily leaving
 237 | temporary work to return immediately when called to work by the
 238 | permanent employing unit that temporarily terminated his or her
 239 | work within the previous 6 calendar months. An individual is not
 240 | disqualified under this subsection for voluntarily leaving work
 241 | to relocate as a result of his or her military-connected
 242 | spouse's permanent change of station orders, activation orders,
 243 | or unit deployment orders.

244 | 2. Disqualification for being discharged for misconduct
 245 | connected with his or her work continues for the full period of
 246 | unemployment next ensuing after having been discharged and until
 247 | the individual is reemployed and has earned income of at least
 248 | 17 times his or her weekly benefit amount and for not more than
 249 | 52 weeks that immediately follow that week, as determined by the
 250 | agency in each case according to the circumstances in each case
 251 | or the seriousness of the misconduct, under the agency's rules

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252 | adopted for determinations of disqualification for benefits for
253 | misconduct.

254 | 3. If an individual has provided notification to the
255 | employing unit of his or her intent to voluntarily leave work
256 | and the employing unit discharges the individual for reasons
257 | other than misconduct before the date the voluntary quit was to
258 | take effect, the individual, if otherwise entitled, shall
259 | receive benefits from the date of the employer's discharge until
260 | the effective date of his or her voluntary quit.

261 | 4. If an individual is notified by the employing unit of
262 | the employer's intent to discharge the individual for reasons
263 | other than misconduct and the individual quits without good
264 | cause, as defined in this section, before the date the discharge
265 | was to take effect, the claimant is ineligible for benefits
266 | pursuant to s. 443.091(1) (e) ~~(d)~~ for failing to be available for
267 | work for the week or weeks of unemployment occurring before the
268 | effective date of the discharge.

269 | (2) If the Agency for Workforce Innovation finds that the
270 | individual has failed without good cause to actively seek work,
271 | apply for available suitable work ~~when directed by the agency or~~
272 | ~~the one-stop career center,~~ ~~to~~ accept suitable work when offered
273 | to him or her, or ~~to~~ return to the individual's customary self-
274 | employment when directed by the agency, the disqualification
275 | continues for the full period of unemployment next ensuing after
276 | he or she failed without good cause to actively seek work, apply
277 | for available suitable work, ~~to~~ accept suitable work, or ~~to~~
278 | return to his or her customary self-employment, under this
279 | subsection, and until the individual has earned income at least

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280 17 times his or her weekly benefit amount. The Agency for
 281 Workforce Innovation shall by rule adopt criteria for
 282 determining the "suitability of work," as used in this section.
 283 The Agency for Workforce Innovation in developing these rules
 284 shall consider the duration of a claimant's unemployment in
 285 determining the suitability of work and the suitability of
 286 proposed rates of compensation for available work. Further,
 287 after an individual has received 19 ~~25~~ weeks of benefits in a
 288 single year, suitable work is a job that pays the minimum wage
 289 and is 120 percent or more of the weekly benefit amount the
 290 individual is drawing.

291 (a) In determining whether or not any work is suitable for
 292 an individual, the Agency for Workforce Innovation shall
 293 consider the degree of risk involved to his or her health,
 294 safety, and morals; his or her physical fitness and prior
 295 training; the individual's experience and prior earnings; his or
 296 her length of unemployment and prospects for securing local work
 297 in his or her customary occupation; and the distance of the
 298 available work from his or her residence.

299 (b) Notwithstanding any other provisions of this chapter,
 300 work is not deemed suitable and benefits may not be denied under
 301 this chapter to any otherwise eligible individual for refusing
 302 to accept new work under any of the following conditions:

303 1. If the position offered is vacant due directly to a
 304 strike, lockout, or other labor dispute.

305 2. If the wages, hours, or other conditions of the work
 306 offered are substantially less favorable to the individual than
 307 those prevailing for similar work in the locality.

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308 3. If as a condition of being employed, the individual
309 would be required to join a company union or to resign from or
310 refrain from joining any bona fide labor organization.

311 (c) If the Agency for Workforce Innovation finds that an
312 individual was rejected for offered employment as the direct
313 result of a positive, confirmed drug test required as a
314 condition of employment, the individual is disqualified for
315 refusing to accept an offer of suitable work.

316 (3) For any week with respect to which he or she is
317 receiving or has received remuneration in the form of:

318 (a) Wages in lieu of notice.

319 (b) Severance pay. The number of weeks that an
320 individual's severance pay disqualifies the individual is equal
321 to the amount of the severance pay divided by that individual's
322 average weekly wage received from his or her most recent
323 employer, rounded down to the nearest whole number, beginning
324 with the week the individual is separated from employment.

325 ~~(c)(b)1.~~ Compensation for temporary total disability or
326 permanent total disability under the workers' compensation law
327 of any state or under a similar law of the United States.

328
329 ~~2. However,~~ If the remuneration referred to in this subsection
330 ~~paragraphs (a) and (b)~~ is less than the benefits that would
331 otherwise be due under this chapter, an individual who is
332 otherwise eligible ~~he or she~~ is entitled to receive for that
333 week, ~~if otherwise eligible,~~ benefits reduced by the amount of
334 the remuneration.

335 (9) If the individual was terminated from his or her work

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336 for violation of any criminal law punishable by imprisonment, or
 337 for any dishonest act, in connection with his or her work, as
 338 follows:

339 (a) If the Agency for Workforce Innovation or the
 340 Unemployment Appeals Commission finds that the individual was
 341 terminated from ~~his or her~~ work for violation of any criminal
 342 law, under any jurisdiction, which was punishable by
 343 ~~imprisonment~~ in connection with his or her work or affected his
 344 or her ability to work, and the individual was convicted ~~found~~
 345 ~~guilty of the offense, made an admission of guilt in a court of~~
 346 ~~law,~~ or entered a plea of guilty or nolo contendere ~~no contest,~~
 347 the individual is not entitled to unemployment benefits for up
 348 to 52 weeks, pursuant to ~~under~~ rules adopted by the agency ~~for~~
 349 ~~Workforce Innovation,~~ and until he or she has earned income of
 350 at least 17 times his or her weekly benefit amount. If, before
 351 an adjudication of guilt, an admission of guilt, or a plea of
 352 nolo contendere ~~no contest,~~ the employer proves by competent
 353 substantial evidence to ~~shows~~ the agency ~~for Workforce~~
 354 ~~Innovation~~ that the arrest was due to a crime against the
 355 employer or the employer's business, customers, or invitees ~~and,~~
 356 ~~after considering all the evidence, the Agency for Workforce~~
 357 ~~Innovation finds misconduct in connection with the individual's~~
 358 ~~work,~~ the individual is not entitled to unemployment benefits.

359 (b) If the Agency for Workforce Innovation or the
 360 Unemployment Appeals Commission finds that the individual was
 361 terminated from work for any dishonest act in connection with
 362 his or her work, the individual is not entitled to unemployment
 363 benefits for up to 52 weeks, under rules adopted by the Agency

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364 for Workforce Innovation, and until he or she has earned income
365 of at least 17 times his or her weekly benefit amount. In
366 addition, if the employer terminates an individual as a result
367 of a dishonest act in connection with his or her work and the
368 Agency for Workforce Innovation finds misconduct in connection
369 with his or her work, the individual is not entitled to
370 unemployment benefits.

371

372 With respect to an individual disqualified for benefits, the
373 account of the terminating employer, if the employer is in the
374 base period, is noncharged at the time the disqualification is
375 imposed.

376 (12) For any week in which the individual is unavailable
377 for work due to incarceration or imprisonment.

378 Section 7. Effective April 1, 2011, subsection (5) of
379 section 443.111, Florida Statutes, is amended to read:

380 443.111 Payment of benefits.—

381 (5) DURATION OF BENEFITS.—

382 (a) As used in this section, the term "Florida average
383 unemployment rate" means the average of the three months for the
384 most recent third calendar year quarter of the seasonally
385 adjusted statewide unemployment rates as published by the Agency
386 for Workforce Innovation.

387 (b)1- Each otherwise eligible individual is entitled
388 during any benefit year to a total amount of benefits equal to
389 25 percent of the total wages in his or her base period, not to
390 exceed \$5,500 or the product arrived at by multiplying the
391 weekly benefit amount with the number of weeks determined in

392 paragraph (c), whichever is less \$7,150. However, the total
 393 amount of benefits, if not a multiple of \$1, is rounded downward
 394 to the nearest full dollar amount. These benefits are payable at
 395 a weekly rate no greater than the weekly benefit amount.

396 (c) For claims submitted during a calendar year, the
 397 duration of benefits is limited to:

398 1. 12 weeks if the Florida average unemployment rate is at
 399 or below 5 percent.

400 2. An additional week in addition to the 12 weeks for each
 401 0.5 percent increment in the Florida average unemployment rate
 402 above 5 percent.

403 3. Up to a maximum of 20 weeks if the Florida average
 404 unemployment rate equals or exceeds 9 percent.

405 (d)2. For the purposes of this subsection, wages are
 406 counted as "wages for insured work" for benefit purposes with
 407 respect to any benefit year only if the benefit year begins
 408 after the date the employing unit by whom the wages were paid
 409 has satisfied the conditions of this chapter for becoming an
 410 employer.

411 (e)(b) If the remuneration of an individual is not based
 412 upon a fixed period or duration of time or if the individual's
 413 wages are paid at irregular intervals or in a manner that does
 414 not extend regularly over the period of employment, the wages
 415 for any week or for any calendar quarter for the purpose of
 416 computing an individual's right to employment benefits only are
 417 determined in the manner prescribed by rule. These rules, to the
 418 extent practicable, must secure results reasonably similar to
 419 those that would prevail if the individual were paid her or his

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420 wages at regular intervals.

421 Section 8. Effective upon this act becoming law and
 422 retroactive to June 30, 2010, paragraphs (b) and (e) of
 423 subsection (3) of section 443.131, Florida Statutes, are amended
 424 to read:

425 443.131 Contributions.—

426 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
 427 EXPERIENCE.—

428 (b) Benefit ratio.—

429 1. As used in this paragraph, the term "annual payroll"
 430 means the calendar quarter taxable payroll reported to the tax
 431 collection service provider for the quarters used in computing
 432 the benefit ratio. The term does not include a penalty resulting
 433 from the untimely filing of required wage and tax reports. All
 434 of the taxable payroll reported to the tax collection service
 435 provider by the end of the quarter preceding the quarter for
 436 which the contribution rate is to be computed must be used in
 437 the computation.

438 2. As used in this paragraph, the term "benefits charged
 439 to the employer's employment record" means the amount of
 440 benefits paid to individuals multiplied by:

441 a. 1.0 for benefits paid prior to July 1, 2007.

442 b. 0.9 for benefits paid during the period beginning on
 443 July 1, 2007, and ending March 31, 2011.

444 c. 1.0 for benefits paid after March 31, 2011.

445 ~~3.2.~~ For each calendar year, the tax collection service
 446 provider shall compute a benefit ratio for each employer whose
 447 employment record was chargeable for benefits during the 12

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448 consecutive quarters ending June 30 of the calendar year
 449 preceding the calendar year for which the benefit ratio is
 450 computed. An employer's benefit ratio is the quotient obtained
 451 by dividing the total benefits charged to the employer's
 452 employment record during the 3-year period ending June 30 of the
 453 preceding calendar year by the total of the employer's annual
 454 payroll for the 3-year period ending June 30 of the preceding
 455 calendar year. The benefit ratio shall be computed to the fifth
 456 decimal place and rounded to the fourth decimal place.

457 ~~4.3-~~ The tax collection service provider shall compute a
 458 benefit ratio for each employer who was not previously eligible
 459 under subparagraph ~~3. 2-~~, whose contribution rate is set at the
 460 initial contribution rate in paragraph (2)(a), and whose
 461 employment record was chargeable for benefits during at least 8
 462 calendar quarters immediately preceding the calendar quarter for
 463 which the benefit ratio is computed. The employer's benefit
 464 ratio is the quotient obtained by dividing the total benefits
 465 charged to the employer's employment record during the first 6
 466 of the 8 completed calendar quarters immediately preceding the
 467 calendar quarter for which the benefit ratio is computed by the
 468 total of the employer's annual payroll during the first 7 of the
 469 9 completed calendar quarters immediately preceding the calendar
 470 quarter for which the benefit ratio is computed. The benefit
 471 ratio shall be computed to the fifth decimal place and rounded
 472 to the fourth decimal place and applies for the remainder of the
 473 calendar year. The employer must subsequently be rated on an
 474 annual basis using up to 12 calendar quarters of benefits
 475 charged and up to 12 calendar quarters of annual payroll. That

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476 employer's benefit ratio is the quotient obtained by dividing
477 the total benefits charged to the employer's employment record
478 by the total of the employer's annual payroll during the
479 quarters used in his or her first computation plus the
480 subsequent quarters reported through June 30 of the preceding
481 calendar year. Each subsequent calendar year, the rate shall be
482 computed under subparagraph 3. 2. The tax collection service
483 provider shall assign a variation from the standard rate of
484 contributions in paragraph (c) on a quarterly basis to each
485 eligible employer in the same manner as an assignment for a
486 calendar year under paragraph (e).

487 (e) Assignment of variations from the standard rate.—

488 1. As used in this paragraph, the terms "total benefit
489 payments," "benefits paid to an individual," and "benefits
490 charged to the employment record of an employer" mean the amount
491 of benefits paid to individuals multiplied by:

492 a. 1.0 for benefits paid prior to July 1, 2007.

493 b. 0.9 for benefits paid during the period beginning on
494 July 1, 2007, and ending March 31, 2011.

495 c. 1.0 for benefits paid after March 31, 2011.

496 2. For the calculation of contribution rates effective
497 January 1, 2010, and thereafter:

498 a.1. The tax collection service provider shall assign a
499 variation from the standard rate of contributions for each
500 calendar year to each eligible employer. In determining the
501 contribution rate, varying from the standard rate to be assigned
502 each employer, adjustment factors computed under sub-sub-
503 subparagraphs (I)-(IV) sub-subparagraphs a.-d. are added to the

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504 benefit ratio. This addition shall be accomplished in two steps
505 by adding a variable adjustment factor and a final adjustment
506 factor. The sum of these adjustment factors computed under sub-
507 sub-subparagraphs (I)-(IV) ~~sub-subparagraphs a.-d.~~ shall first
508 be algebraically summed. The sum of these adjustment factors
509 shall next be divided by a gross benefit ratio determined as
510 follows: Total benefit payments for the 3-year period described
511 in subparagraph (b)3. ~~(b)2.~~ are charged to employers eligible
512 for a variation from the standard rate, minus excess payments
513 for the same period, divided by taxable payroll entering into
514 the computation of individual benefit ratios for the calendar
515 year for which the contribution rate is being computed. The
516 ratio of the sum of the adjustment factors computed under sub-
517 sub-subparagraphs (I)-(IV) ~~sub-subparagraphs a.-d.~~ to the gross
518 benefit ratio is multiplied by each individual benefit ratio
519 that is less than the maximum contribution rate to obtain
520 variable adjustment factors; except that if the sum of an
521 employer's individual benefit ratio and variable adjustment
522 factor exceeds the maximum contribution rate, the variable
523 adjustment factor is reduced in order for the sum to equal the
524 maximum contribution rate. The variable adjustment factor for
525 each of these employers is multiplied by his or her taxable
526 payroll entering into the computation of his or her benefit
527 ratio. The sum of these products is divided by the taxable
528 payroll of the employers who entered into the computation of
529 their benefit ratios. The resulting ratio is subtracted from the
530 sum of the adjustment factors computed under sub-sub-
531 subparagraphs (I)-(IV) ~~sub-subparagraphs a.-d.~~ to obtain the

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532 final adjustment factor. The variable adjustment factors and the
533 final adjustment factor must be computed to five decimal places
534 and rounded to the fourth decimal place. This final adjustment
535 factor is added to the variable adjustment factor and benefit
536 ratio of each employer to obtain each employer's contribution
537 rate. An employer's contribution rate may not, however, be
538 rounded to less than 0.1 percent.

539 (I)a. An adjustment factor for noncharge benefits is
540 computed to the fifth decimal place and rounded to the fourth
541 decimal place by dividing the amount of noncharge benefits
542 during the 3-year period described in subparagraph (b)3. ~~(b)2.~~
543 by the taxable payroll of employers eligible for a variation
544 from the standard rate who have a benefit ratio for the current
545 year which is less than the maximum contribution rate. For
546 purposes of computing this adjustment factor, the taxable
547 payroll of these employers is the taxable payrolls for the 3
548 years ending June 30 of the current calendar year as reported to
549 the tax collection service provider by September 30 of the same
550 calendar year. As used in this sub-sub-subparagraph ~~sub-~~
551 ~~subparagraph~~, the term "noncharge benefits" means benefits paid
552 to an individual from the Unemployment Compensation Trust Fund,
553 but which were not charged to the employment record of any
554 employer.

555 (II)b. An adjustment factor for excess payments is
556 computed to the fifth decimal place, and rounded to the fourth
557 decimal place by dividing the total excess payments during the
558 3-year period described in subparagraph (b)3. ~~(b)2.~~ by the
559 taxable payroll of employers eligible for a variation from the

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560 standard rate who have a benefit ratio for the current year
561 which is less than the maximum contribution rate. For purposes
562 of computing this adjustment factor, the taxable payroll of
563 these employers is the same figure used to compute the
564 adjustment factor for noncharge benefits under sub-sub-
565 subparagraph (I) ~~sub-subparagraph a.~~ As used in this sub-
566 subparagraph, the term "excess payments" means the amount of
567 benefits charged to the employment record of an employer during
568 the 3-year period described in subparagraph (b)3. ~~(b)2.~~, less
569 the product of the maximum contribution rate and the employer's
570 taxable payroll for the 3 years ending June 30 of the current
571 calendar year as reported to the tax collection service provider
572 by September 30 of the same calendar year. As used in this sub-
573 sub-subparagraph ~~sub-subparagraph~~, the term "total excess
574 payments" means the sum of the individual employer excess
575 payments for those employers that were eligible for assignment
576 of a contribution rate different from the standard rate.

577 (III)e. With respect to computing a positive adjustment
578 factor:

579 (A) ~~(I)~~ Beginning January 1, 2012, if the balance of the
580 Unemployment Compensation Trust Fund on September 30 of the
581 calendar year immediately preceding the calendar year for which
582 the contribution rate is being computed is less than 4 percent
583 of the taxable payrolls for the year ending June 30 as reported
584 to the tax collection service provider by September 30 of that
585 calendar year, a positive adjustment factor shall be computed.
586 The positive adjustment factor is computed annually to the fifth
587 decimal place and rounded to the fourth decimal place by

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588 dividing the sum of the total taxable payrolls for the year
589 ending June 30 of the current calendar year as reported to the
590 tax collection service provider by September 30 of that calendar
591 year into a sum equal to one-third of the difference between the
592 balance of the fund as of September 30 of that calendar year and
593 the sum of 5 percent of the total taxable payrolls for that
594 year. The positive adjustment factor remains in effect for
595 subsequent years until the balance of the Unemployment
596 Compensation Trust Fund as of September 30 of the year .
597 immediately preceding the effective date of the contribution
598 rate equals or exceeds 5 percent of the taxable payrolls for the
599 year ending June 30 of the current calendar year as reported to
600 the tax collection service provider by September 30 of that
601 calendar year.

602 (B) ~~(H)~~ Beginning January 1, 2015, and for each year
603 thereafter, the positive adjustment shall be computed by
604 dividing the sum of the total taxable payrolls for the year
605 ending June 30 of the current calendar year as reported to the
606 tax collection service provider by September 30 of that calendar
607 year into a sum equal to one-fourth of the difference between
608 the balance of the fund as of September 30 of that calendar year
609 and the sum of 5 percent of the total taxable payrolls for that
610 year. The positive adjustment factor remains in effect for
611 subsequent years until the balance of the Unemployment
612 Compensation Trust Fund as of September 30 of the year
613 immediately preceding the effective date of the contribution
614 rate equals or exceeds 4 percent of the taxable payrolls for the
615 year ending June 30 of the current calendar year as reported to

616 the tax collection service provider by September 30 of that
 617 calendar year.

618 (IV)~~d.~~ If, beginning January 1, 2015, and each year
 619 thereafter, the balance of the Unemployment Compensation Trust
 620 Fund as of September 30 of the year immediately preceding the
 621 calendar year for which the contribution rate is being computed
 622 exceeds 5 percent of the taxable payrolls for the year ending
 623 June 30 of the current calendar year as reported to the tax
 624 collection service provider by September 30 of that calendar
 625 year, a negative adjustment factor must be computed. The
 626 negative adjustment factor shall be computed annually beginning
 627 on January 1, 2015, and each year thereafter, to the fifth
 628 decimal place and rounded to the fourth decimal place by
 629 dividing the sum of the total taxable payrolls for the year
 630 ending June 30 of the current calendar year as reported to the
 631 tax collection service provider by September 30 of the calendar
 632 year into a sum equal to one-fourth of the difference between
 633 the balance of the fund as of September 30 of the current
 634 calendar year and 5 percent of the total taxable payrolls of
 635 that year. The negative adjustment factor remains in effect for
 636 subsequent years until the balance of the Unemployment
 637 Compensation Trust Fund as of September 30 of the year
 638 immediately preceding the effective date of the contribution
 639 rate is less than 5 percent, but more than 4 percent of the
 640 taxable payrolls for the year ending June 30 of the current
 641 calendar year as reported to the tax collection service provider
 642 by September 30 of that calendar year. The negative adjustment
 643 authorized by this section is suspended in any calendar year in

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644 | which repayment of the principal amount of an advance received
645 | from the federal Unemployment Compensation Trust Fund under 42
646 | U.S.C. s. 1321 is due to the Federal Government.

647 | (V)~~e~~. The maximum contribution rate that may be assigned
648 | to an employer is 5.4 percent, except employers participating in
649 | an approved short-time compensation plan may be assigned a
650 | maximum contribution rate that is 1 percent greater than the
651 | maximum contribution rate for other employers in any calendar
652 | year in which short-time compensation benefits are charged to
653 | the employer's employment record.

654 | (VI)~~f~~. As used in this subsection, "taxable payroll" shall
655 | be determined by excluding any part of the remuneration paid to
656 | an individual by an employer for employment during a calendar
657 | year in excess of the first \$7,000. Beginning January 1, 2012,
658 | "taxable payroll" shall be determined by excluding any part of
659 | the remuneration paid to an individual by an employer for
660 | employment during a calendar year as described in s.

661 | 443.1217(2). For the purposes of the employer rate calculation
662 | that will take effect in January 1, 2012, and in January 1,
663 | 2013, the tax collection service provider shall use the data
664 | available for taxable payroll from 2009 based on excluding any
665 | part of the remuneration paid to an individual by an employer
666 | for employment during a calendar year in excess of the first
667 | \$7,000, and from 2010 and 2011, the data available for taxable
668 | payroll based on excluding any part of the remuneration paid to
669 | an individual by an employer for employment during a calendar
670 | year in excess of the first \$8,500.

671 | b.2. If the transfer of an employer's employment record to

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672 an employing unit under paragraph (f) which, before the
673 transfer, was an employer, the tax collection service provider
674 shall recompute a benefit ratio for the successor employer based
675 on the combined employment records and reassign an appropriate
676 contribution rate to the successor employer effective on the
677 first day of the calendar quarter immediately after the
678 effective date of the transfer.

679 Section 9. Present paragraph (f) of subsection (1) of
680 section 443.141, Florida Statutes, is redesignated as paragraph
681 (g), and new paragraph (f) is added to that subsection to read:

682 443.141 Collection of contributions and reimbursements.—

683 (1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT,
684 ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

685 (f) Payments for 2012, 2013, and 2014 Contributions.—For
686 an annual administrative fee not to exceed \$5, a contributing
687 employer may pay its quarterly contributions due for wages paid
688 in the first three quarters of 2012, 2013, and 2014 in equal
689 installments if those contributions are paid as follows:

690 1. For contributions due for wages paid in the first
691 quarter of each year, one-fourth of the contributions due must
692 be paid on or before April 30, one-fourth must be paid on or
693 before July 31, one-fourth must be paid on or before October 31,
694 and one-fourth must be paid on or before December 31.

695 2. In addition to the payments specified in subparagraph
696 1., for contributions due for wages paid in the second quarter
697 of each year, one-third of the contributions due must be paid on
698 or before July 31, one-third must be paid on or before October
699 31, and one-third must be paid on or before December 31.

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700 3. In addition to the payments specified in subparagraphs
701 1. and 2., for contributions due for wages paid in the third
702 quarter of each year, one-half of the contributions due must be
703 paid on or before October 31, and one-half must be paid on or
704 before December 31.

705 4. The annual administrative fee assessed for electing to
706 pay under the installment method shall be collected at the time
707 the employer makes the first installment payment each year. The
708 fee shall be segregated from the payment and deposited into the
709 Operating Trust Fund of the Department of Revenue.

710 5. Interest does not accrue on any contribution that
711 becomes due for wages paid in the first three quarters of each
712 year if the employer pays the contribution in accordance with
713 subparagraphs 1.-4. Interest and fees continue to accrue on
714 prior delinquent contributions and commence accruing on all
715 contributions due for wages paid in the first three quarters of
716 each year which are not paid in accordance with subparagraphs
717 1.-3. Penalties may be assessed in accordance with this chapter.
718 The contributions due for wages paid in the fourth quarter of
719 2012, 2013, and 2014 are not affected by this paragraph and are
720 due and payable in accordance with this chapter.

721 Section 10. Paragraphs (b) and (d) of subsection (3) and
722 paragraphs (b) and (e) of subsection (4) of section 443.151,
723 Florida Statutes, are amended to read:

724 443.151 Procedure concerning claims.—

725 (3) DETERMINATION OF ELIGIBILITY.—

726 (b) Monetary determinations.—In addition to the notice of
727 claim, the Agency for Workforce Innovation must ~~shall~~ also

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728 promptly provide an initial monetary determination to the
729 claimant and each base period employer whose account is subject
730 to being charged for its respective share of benefits on the
731 claim. The monetary determination must include a statement of
732 whether and in what amount the claimant is entitled to benefits,
733 and, in the event of a denial, must state the reasons for the
734 denial. A monetary determination for the first week of a benefit
735 year must also include a statement of whether the claimant was
736 paid the wages required under s. 443.091(1) (h) ~~(g)~~ and, if so,
737 the first day of the benefit year, the claimant's weekly benefit
738 amount, and the maximum total amount of benefits payable to the
739 claimant for a benefit year. The monetary determination is final
740 unless within 20 days after the mailing of the notices to the
741 parties' last known addresses, or in lieu of mailing, within 20
742 days after the delivery of the notices, an appeal or written
743 request for reconsideration is filed by the claimant or other
744 party entitled to notice. The agency may adopt rules as
745 necessary to implement the processes described in this paragraph
746 relating to notices of monetary determinations and the appeals
747 or reconsideration requests filed in response to such notices.

748 (d) Determinations in labor dispute cases.—If a ~~Whenever~~
749 ~~any~~ claim involves a labor dispute described in s. 443.101(4),
750 the Agency for Workforce Innovation shall promptly assign the
751 claim to a special examiner who shall make a determination on
752 the issues involving unemployment due to the labor dispute. The
753 special examiner shall make the determination after an
754 investigation, as necessary. The claimant or another party
755 entitled to notice of the determination may appeal a

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756 determination under subsection (4).

757 (4) APPEALS.—

758 (b) Filing and hearing.—

759 1. The claimant or any other party entitled to notice of a
760 determination may appeal an adverse determination to an appeals
761 referee within 20 days after the date of mailing of the notice
762 to her or his last known address or, if the notice is not
763 mailed, within 20 days after the date of delivery of the notice.

764 2. Unless the appeal is untimely or withdrawn or review is
765 initiated by the commission, the appeals referee, after mailing
766 all parties and attorneys of record a notice of hearing at least
767 10 days before the date of hearing, notwithstanding the 14-day
768 notice requirement in s. 120.569(2)(b), may only affirm, modify,
769 or reverse the determination. An appeal may not be withdrawn
770 without the permission of the appeals referee.

771 3. However, when an appeal appears to have been filed
772 after the permissible time limit, the Office of Appeals may
773 issue an order to show cause to the appellant, requiring the
774 appellant to show why the appeal should not be dismissed as
775 untimely. If the appellant does not, within 15 days after the
776 mailing date of the order to show cause, provide written
777 evidence of timely filing or good cause for failure to appeal
778 timely, the appeal shall be dismissed.

779 4. When an appeal involves a question of whether services
780 were performed by a claimant in employment or for an employer,
781 the referee must give special notice of the question and of the
782 pendency of the appeal to the employing unit and to the Agency
783 for Workforce Innovation, both of which become parties to the

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784 proceeding.

785 5.a. Any part of the evidence may be received in written
 786 form, and all testimony of parties and witnesses shall be made
 787 under oath.

788 b. Irrelevant, immaterial, or unduly repetitious evidence
 789 shall be excluded, but all other evidence of a type commonly
 790 relied upon by reasonably prudent persons in the conduct of
 791 their affairs shall be admissible, whether or not such evidence
 792 would be admissible in a trial in the courts of the state.

793 c. Hearsay evidence may be used for the purpose of
 794 supplementing or explaining other evidence, or to support a
 795 finding if it would be admissible over objection in civil
 796 actions. Notwithstanding s. 120.57(1)(c), hearsay evidence may
 797 support a finding of fact if:

798 (I) The party against whom it is offered has a reasonable
 799 opportunity to review such evidence prior to the hearing; and

800 (II) The appeals referee or special deputy determines,
 801 after considering all relevant facts and circumstances, that the
 802 evidence is trustworthy and probative and that the interests of
 803 justice will best be served by its admission into evidence.

804 ~~6.5-~~ The parties must be notified promptly of the
 805 referee's decision. The referee's decision is final unless
 806 further review is initiated under paragraph (c) within 20 days
 807 after the date of mailing notice of the decision to the party's
 808 last known address or, in lieu of mailing, within 20 days after
 809 the delivery of the notice.

810 (e) Judicial review.—Orders of the commission entered
 811 under paragraph (c) are subject to appellate review ~~only by~~

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812 ~~notice of appeal~~ in the district court of appeal in the
813 appellate district in which a claimant resides or the job
814 separation arose ~~the issues involved were decided by an appeals~~
815 ~~referee.~~ However, if the notice of appeal is submitted to the
816 commission, the commission shall file the notice in the district
817 court of appeal in the appellate district in which the order was
818 issued. Notwithstanding chapter 120, the commission is a party
819 respondent to every such proceeding. The Agency for Workforce
820 Innovation may initiate judicial review of orders in the same
821 manner and to the same extent as any other party.

822 Section 11. Section (10) is added to section 443.171,
823 Florida Statutes, to read:

824 443.171 Agency for Workforce Innovation and commission;
825 powers and duties; records and reports; proceedings; state-
826 federal cooperation.—

827 (10) EVIDENCE OF MAILING.—The existence of a mailing date
828 on any notice, determination, decision, order, or other document
829 mailed by the Agency for Workforce Innovation or its tax
830 collection service provider pursuant to this chapter creates a
831 rebuttable presumption that such notice, determination, order,
832 or other document was mailed on the date indicated.

833 Section 12. Notwithstanding the expiration date contained
834 in section 1 of chapter 2010-90, Laws of Florida, operating
835 retroactive to June 2, 2010, and expiring January 4, 2012,
836 section 443.1117, Florida Statutes, is revived, readopted, and
837 amended to read:

838 443.1117 Temporary extended benefits.—

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839 (1) APPLICABILITY OF EXTENDED BENEFITS STATUTE.—Except if
 840 the result is inconsistent with other provisions of this
 841 section, s. 443.1115(2), (3), (4), (6), and (7) apply to all
 842 claims covered by this section.

843 (2) DEFINITIONS.—As used in ~~For the purposes of~~ this
 844 section, the term:

845 (a) "Regular benefits" and "extended benefits" have the
 846 same meaning as in s. 443.1115.

847 (b) "Eligibility period" means the weeks in an
 848 individual's benefit year or emergency benefit period which
 849 begin in an extended benefit period and, if the benefit year or
 850 emergency benefit period ends within that extended benefit
 851 period, any subsequent weeks beginning in that period.

852 (c) "Emergency benefits" means Emergency Unemployment
 853 Compensation paid pursuant to Pub. L. No. 110-252, Pub. L. No.
 854 110-449, Pub. L. No. 111-5, Pub. L. No. 111-92, Pub. L. No. 111-
 855 118, Pub. L. No. 111-144, ~~and~~ Pub. L. No. 111-157, Pub. L. No.
 856 111-205, and Pub. L. No. 111-312.

857 (d) "Extended benefit period" means a period that:
 858 1. Begins with the third week after a week for which there
 859 is a state "on" indicator; and
 860 2. Ends with any of the following weeks, whichever occurs
 861 later:
 862 a. The third week after the first week for which there is
 863 a state "off" indicator; or
 864 b. The 13th consecutive week of that period.

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866 However, an extended benefit period may not begin by reason of a
867 state "on" indicator before the 14th week after the end of a
868 prior extended benefit period that was in effect for this state.

869 (e) "Emergency benefit period" means the period during
870 which an individual receives emergency benefits ~~as defined in~~
871 ~~paragraph (c)~~.

872 (f) "Exhaustee" means an individual who, for any week of
873 unemployment in her or his eligibility period:

874 1. Has received, before that week, all of the regular
875 benefits and emergency benefits, if any, available under this
876 chapter or any other law, including dependents' allowances and
877 benefits payable to federal civilian employees and ex-
878 servicemembers under 5 U.S.C. ss. 8501-8525, in the current
879 benefit year or emergency benefit period that includes that
880 week. For the purposes of this subparagraph, an individual has
881 received all of the regular benefits and emergency benefits, if
882 any, available even if although, as a result of a pending appeal
883 for wages paid for insured work which were not considered in the
884 original monetary determination in the benefit year, she or he
885 may subsequently be determined to be entitled to added regular
886 benefits;

887 2. Had a benefit year that ~~which~~ expired before that week,
888 and was paid no, or insufficient, wages for insured work on the
889 basis of which she or he could establish a new benefit year that
890 includes that week; and

891 3.a. Has no right to unemployment benefits or allowances
892 under the Railroad Unemployment Insurance Act or other federal

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893 laws as specified in regulations issued by the United States
 894 Secretary of Labor; and

895 b. Has not received and is not seeking unemployment
 896 benefits under the unemployment compensation law of Canada; but
 897 if an individual is seeking those benefits and the appropriate
 898 agency finally determines that she or he is not entitled to
 899 benefits under that law, she or he is considered an exhaustee.

900 (g) "State 'on' indicator" means, with respect to weeks of
 901 unemployment ~~beginning on or after February 1, 2009,~~ and ending
 902 on or before December 10, 2011 ~~May 8, 2010,~~ the occurrence of a
 903 week in which the average total unemployment rate, seasonally
 904 adjusted, as determined by the United States Secretary of Labor,
 905 for the most recent 3 months for which data for all states are
 906 published by the United States Department of Labor:

907 1. Equals or exceeds 110 percent of the average of those
 908 rates for the corresponding 3-month period ending in any or all
 909 ~~each~~ of the preceding 3 ~~2~~ calendar years; and

910 2. Equals or exceeds 6.5 percent.

911 (h) "High unemployment period" means, with respect to
 912 weeks of unemployment ~~beginning on or after February 1, 2009,~~
 913 ~~and~~ ending on or before December 10, 2011 ~~May 8, 2010,~~ any week
 914 in which the average total unemployment rate, seasonally
 915 adjusted, as determined by the United States Secretary of Labor,
 916 for the most recent 3 months for which data for all states are
 917 published by the United States Department of Labor:

918 1. Equals or exceeds 110 percent of the average of those
 919 rates for the corresponding 3-month period ending in any or all
 920 ~~each~~ of the preceding 3 ~~2~~ calendar years; and

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921 | 2. Equals or exceeds 8 percent.

922 | (i) "State 'off' indicator" means the occurrence of a week
923 | in which there is no state "on" indicator or which does not
924 | constitute a high unemployment period.

925 | (3) TOTAL EXTENDED BENEFIT AMOUNT.—Except as provided in
926 | subsection (4):

927 | (a) For any week for which there is an "on" indicator
928 | pursuant to paragraph (2)(g), the total extended benefit amount
929 | payable to an eligible individual for her or his applicable
930 | benefit year is the lesser of:

931 | 1. Fifty percent of the total regular benefits payable
932 | under this chapter in the applicable benefit year; or

933 | 2. Thirteen times the weekly benefit amount payable under
934 | this chapter for a week of total unemployment in the applicable
935 | benefit year.

936 | (b) For any high unemployment period, the total extended
937 | benefit amount payable to an eligible individual for her or his
938 | applicable benefit year is the lesser of:

939 | 1. Eighty percent of the total regular benefits payable
940 | under this chapter in the applicable benefit year; or

941 | 2. Twenty times the weekly benefit amount payable under
942 | this chapter for a week of total unemployment in the applicable
943 | benefit year.

944 | (4) EFFECT ON TRADE READJUSTMENT.—Notwithstanding any
945 | other provision of this chapter, if the benefit year of an
946 | individual ends within an extended benefit period, the number of
947 | weeks of extended benefits the individual is entitled to receive
948 | in that extended benefit period for weeks of unemployment

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949 beginning after the end of the benefit year, except as provided
950 in this section, is reduced, but not to below zero, by the
951 number of weeks for which the individual received, within that
952 benefit year, trade readjustment allowances under the Trade Act
953 of 1974, as amended.

954 Section 13. The provisions of s. 443.1117, Florida
955 Statutes, as revived, readopted, and amended by this act, apply
956 only to claims for weeks of unemployment in which an exhaustee
957 establishes entitlement to extended benefits pursuant to that
958 section which are established for the period between December
959 17, 2010, and January 4, 2012.

960 Section 14. The Legislature finds that this act fulfills
961 an important state interest.

962 Section 15. Except as otherwise expressly provided in this
963 act, this act shall take effect upon becoming a law.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 7005 (2011)

Amendment No. 01

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Holder offered the following:

3
4 **Amendment (with title amendment)**

5 Between lines 92 and 93, insert:

6 (26) "Individual in continued reporting status" means an
7 individual who has been determined to be eligible pursuant to s.
8 443.091 who is reporting to the Agency for Workforce Innovation
9 in accordance with s. 443.091(1)(c).

10 (27) "Initial skills review" means an online education or
11 training program, such as that established under s. 1004.99,
12 which is approved by the Agency for Workforce Innovation and
13 designed to measure an individual's mastery level of workplace
14 skills.

15
16
17 -----
18 **T I T L E A M E N D M E N T**

19 Remove line 8 and insert:

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 7005 (2011)

Amendment No.

20 revising and creating definitions; revising the term

21 "misconduct" to

Amendment No. 02

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Holder offered the following:

3
4 **Amendment (with directory and title amendments)**

5 Remove lines 163-183 and insert:

6 (c) 1. To make continued claims for benefits, she or he is
7 reporting to the agency in accordance with its rules.

8 2. These rules may not conflict with s. 443.111(1)(b),
9 including the requirement that each claimant continue to report
10 regardless of any pending appeal relating to her or his
11 eligibility or disqualification for benefits.

12 3. An individual in continued reporting status must
13 participate in an initial skills review as directed by the
14 Agency for Workforce Innovation. The failure of the individual
15 to comply with this requirement will result in the individual
16 being determined ineligible for the week in which the
17 noncompliance occurred and for any subsequent week of
18 unemployment until the requirement is satisfied. However, this
19 requirement does not apply if the individual is able to
20 affirmatively attest to being unable to complete such review due

Amendment No.

21 to illiteracy, language barrier, or technological impediment.

22 4. The administrator or operator of the initial skills
23 review must notify the agency when the individual completes
24 participation in the initial skills review. The administrator or
25 operator of the initial skills review must also report the
26 results of the individual's initial skills review to the
27 regional workforce board or the one-stop career center as
28 directed by the workforce board for reemployment services.
29

30

31 -----

32 **D I R E C T O R Y A M E N D M E N T**

33 Remove lines 154-158 and insert:

34 Section 5. Effective August 1, 2011, paragraph (c) of
35 subsection (1) of section 443.091, Florida Statutes, is amended
36 to read:

37

38

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40 **T I T L E A M E N D M E N T**

41 Remove line 12 and insert:

42 that an applicant for benefits participate in an initial skills

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 7005 (2011)

Amendment No. 03

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Holder offered the following:

3

4 **Amendment**

5 Remove lines 336-344 and insert:

6 ~~for violation of any criminal law punishable by imprisonment, or~~
7 ~~for any dishonest act, in connection with his or her work, as~~
8 follows:

9 (a) If the Agency for Workforce Innovation or the
10 Unemployment Appeals Commission finds that the individual was
11 terminated from ~~his or her~~ work for violation of any criminal
12 law, under any jurisdiction, which was punishable by
13 ~~imprisonment~~ in connection with his or her work, and the
14 individual was convicted ~~found~~

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 7005 (2011)

Amendment No. **04**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Holder offered the following:

3
4 **Amendment (with title amendment)**

5 Between lines 959 and 960, insert:

6 Section 14. For the 2011-2012 fiscal year, the sum of
7 \$242,300 in nonrecurring funds is appropriated from the
8 Operating Trust Fund to the Administration of Unemployment
9 Compensation Tax Special Category in the Department of Revenue
10 to be used to implement this act. In addition for the 2010-2011
11 fiscal year, the sum of \$256,891 in nonrecurring funds is
12 appropriated from the Employment Security Administration Trust
13 Fund in the contracted services appropriation category to the
14 Agency for Workforce Innovation to be used to contract with the
15 Department of Revenue for tax-related services as required to
16 implement this act.

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COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 7005 (2011)

Amendment No.

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23

T I T L E A M E N D M E N T

Remove line 36 and insert:

high unemployment; providing applicability; providing
appropriations for purposes of implementation; providing that

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COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative Randolph offered the following:

Amendment (with title amendment)

Remove lines 390-420 and insert:

exceed \$7,150. However, the total amount of benefits, if not a multiple of \$1, is rounded downward to the nearest full dollar amount. These benefits are payable at a weekly rate no greater than the weekly benefit amount.

(c) For claims submitted during a calendar year, the duration of benefits is limited to:

1. 16 weeks if the Florida average unemployment rate is at or below 5 percent.

2. An additional week in addition to the 16 weeks for each 0.5 percent increment in the Florida average unemployment rate above 5 percent, up to a maximum of 26 weeks.

(d) Notwithstanding any other provision in this section, an eligible individual whose employer has violated the provisions of s. 435.12 within 36 months after the individual

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 7005 (2011)

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20 filing for benefits is entitled to benefits equal to twice the
21 amount described in this section.

22 (e)2- For the purposes of this subsection, wages are
23 counted as "wages for insured work" for benefit purposes with
24 respect to any benefit year only if the benefit year begins
25 after the date the employing unit by whom the wages were paid
26 has satisfied the conditions of this chapter for becoming an
27 employer.

28 (f)(b) If the remuneration of an individual is not based
29 upon a fixed period or duration of time or if the individual's
30 wages are paid at irregular intervals or in a manner that does
31 not extend regularly over the period of employment, the wages
32 for any week or for any calendar quarter for the purpose of
33 computing an individual's right to employment benefits only are
34 determined in the manner prescribed by rule. These rules, to the
35 extent practicable, must secure results reasonably similar to
36 those that would prevail if the individual were paid her or his
37 wages at regular intervals.

38 Section 8. Section 435.12, Florida Statutes, is created to
39 read:

40 435.12 Employment of unauthorized aliens.-

41 (1) As used in this section, the term:

42 (a) "Employee" means any person who performs employment
43 services in this state for an employer pursuant to an employment
44 relationship between the employee and employer.

45 (b) "Employer" means any individual or type of
46 organization transacting business in this state and employing

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47 one or more individuals who perform employment services in this
48 state.

49 (c) "E-Verify system" means the Employment Authorization
50 Program, formerly the "Basic Pilot Program," under Pub. L. No.
51 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655 (Sept.
52 30, 1996), as amended, or any successor program designated by
53 the Federal Government for verification that an employee is an
54 employment-authorized alien.

55 (d) "Knowingly employ an unauthorized alien" means the
56 actions described in 8 U.S.C. s. 1324a. This term shall be
57 interpreted consistently with 8 U.S.C. s. 1324a and any
58 applicable federal rules and regulations.

59 (e) "Unauthorized alien" means an alien who is not
60 authorized under federal law to be employed in the United
61 States, as described in 8 U.S.C. s. 1324a(h)(3).

62 (2) An employer may not knowingly employ an unauthorized
63 alien.

64 (3) Beginning July 1, 2011, an employer with more than 25
65 employees must use the E-Verify system to verify the employment
66 eligibility of all newly hired employees.

67 (4) For the purposes of this section, compliance with
68 subsection (3) creates a rebuttable presumption that an employer
69 did not knowingly employ an unauthorized alien in violation of
70 subsection (2).

71 (5)(a) An employer who knowingly employs an unauthorized
72 alien commits a misdemeanor of the second degree, punishable as
73 provided in s. 775.082 or s. 775.083, shall be assessed a fine
74 of \$10,000 for each unauthorized alien knowingly employed, and

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75 shall be ineligible to bid on any local or state government
76 project or contract for 3 years. Any and all fines collected
77 pursuant to this subsection shall be deposited into the
78 Unemployment Compensation Trust Fund.

79 (b) On receipt of a complaint that an employer allegedly
80 knowingly employs an unauthorized alien, the state attorney with
81 jurisdiction over the county in which the unauthorized alien was
82 employed shall investigate the complaint and shall verify the
83 employment eligibility of the alleged unauthorized alien. A
84 person who knowingly files a false or frivolous complaint under
85 this section commits a misdemeanor of the second degree,
86 punishable as provided in s. 775.082 or s. 775.083.

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90 **T I T L E A M E N D M E N T**

91 Remove lines 19-20 and insert:

92 revising the calculation of the number of weeks of a claimant's
93 benefit eligibility; creating s. 435.12, F.S.; providing
94 definitions; prohibiting an employer from employing an
95 unauthorized alien; requiring certain employers to use the
96 Employment Authorization Program to verify the employment
97 eligibility of each newly hired employee on or after a specified
98 date; providing penalties; providing procedures for complaints
99 alleging that an employer has employed an unauthorized alien;
100 providing penalties;