



Economic Development & Tourism Subcommittee

**Thursday, February 10, 2011
12:30 PM
12 HOB**

**Dean Cannon
Speaker**

**Doug Holder
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Economic Development & Tourism Subcommittee

Start Date and Time: Thursday, February 10, 2011 12:30 pm

End Date and Time: Thursday, February 10, 2011 02:15 pm

Location: 12 HOB

Duration: 1.75 hrs

Consideration of the following proposed committee bill(s):

PCB EDTS 11-01 -- Unemployment Compensation

NOTICE FINALIZED on 02/03/2011 16:07 by Adeyemo.Martha

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee		Kruse MK	Tinker TRST

SUMMARY ANALYSIS

The bill addresses aspects of the state's unemployment compensation (UC) system related to a claimant's state and federal benefits, how a claimant can be qualified to receive state benefits, a claimant's 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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background:

Florida's businesses and residents continue to struggle due to the state's economic conditions. For 2010, the Department of Revenue reports 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 seen a dramatic increase, going from \$8.40 per employee in 2009 to \$72.10 per employee in 2011 for those paying the minimum UC tax rate.

The state's unemployment compensation (UC) system has its historical roots from the late 1930s. Current parts of the definitions and benefit amounts are based on law and practice from the early establishment of other states' UC systems which were adopted into Florida's system decades ago. This bill addresses some of those issues and makes changes to benefit amounts, benefit determination procedures and appeals, and provides relief to businesses on their UC taxes.

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 unemployment compensation (UC) payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).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 claim 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, *Boynton Cab Co. v. Neubeck*

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-Stops provide job search counseling and workshops, occupational and labor market information, referral to potential employers, and job training assistance. Claimants may also receive an e-mail from Employ Florida Marketplace with information about employment services or available jobs.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 and not statutorily, 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

The Legislature enacted, in 2009, 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 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 any automatic increase due to the positive adjustment tax rate factor until 2012. This action was taken to avoid a significant tax increase on businesses during the severe economic downturn.

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 the new schedule. 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 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 state UC trust fund also accrue interest charges on a federal fiscal year basis 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 coming due in September 2011, employers will be assessed a per-employee fee in February 2011 separate from their

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 installment 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)

unemployment taxes which will be due June 2011. The interest 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 4 and 6 of the bill make several changes to a claimant's state benefits. Section 4 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 6 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 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 the maximum number of weeks-20. If the Florida average unemployment rate is 5% or below, the number of available weeks is 12. Each 0.5% increment above 5% adds an additional week of benefits.

The 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 whatever weekly amount the claimant was receiving under their state benefit. Four federal tiers and a period of temporary extended benefits are available for a possible total of 58 weeks. Combined with the total number of state benefits, 20 weeks under the provisions of the bill, the total is 78 weeks. 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 11 and 12 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 5 address employee behavior or how that behavior is construed in the law. 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 current law is based on a 1941 Wisconsin Supreme Court decision (see footnote 11) that stated a definition of misconduct. 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 the change is to somewhat 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 strikes "evil design" in the second form of behavior that can be classified as misconduct that may be a historic relic. Research is unclear as to how an employer could prove an employee had an "evil design" as it is unclear what elements might constitute that term.

This section 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 described in the previous paragraph. The bill requires that for chronic absenteeism or tardiness to be considered misconduct that 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, but the employee is given an opportunity to provide evidence as to why the rule was not followed.

Section 5 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. The bill also adds that disqualification may occur for a crime that affects an employee's ability to perform his or her work. The bill also provides for disqualification from benefits if the employee is in prison. 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 9 makes changes to 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 change may be more convenient for a claimant since the appeal may be located nearer to the claimant's home or where the job separation occurred.

Related to appeals and other documents mailed to claimants, section 10 of the bill provides that the date on the Agency document mailed to the 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 7 and 8 address employers tax rates and quarterly payments of the UC tax bills. Section 7 reduces most employers' tax rates by revising their benefit ratio calculation downward 10% which is used to compute their ultimate tax rate. Since the lookback 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 8 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.

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 13 states that the bill fulfills an important state interest and section 14 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. 443.091, F.S., relating to a UC claimant completing an initial skills review.
- Section 5. Amends s. 443.101, F.S., relating to disqualification for benefits.
- Section 6. Amends s. 443.111, F.S., relating to payment of benefits.
- Section 7. Amends s. 443.131, F.S., the calculation of an employer's benefit ratio used to determine the employer's tax rate.
- Section 8. Amends s. 443.141, F.S., relating to employer quarterly tax payments for 2012, 2013, and 2014.
- Section 9. Amends s. 443.151, F.S., relating to procedures concerning claims.
- Section 10. Amends s. 443.171, F.S., relating to evidence of mailing.
- Section 11. Amends s. 443.1117, F.S., relating to extended benefits.
- Section 12. Providing for applicability of claims under the provisions of s. 443.1117, F.S.
- Section 13. Provides that the bill fulfills an important state interest.

Section 14. 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:

The \$5 administrative fee to participate in the installment payment program for UC taxes is a per year fee. The amount of money generated from the fee depends on the number of businesses electing to participate. In 2010, out of 450,000 employers, only about 5,000 elected to participate in this option (representing a total of \$127 million in UC taxes). However, due to the expected significant increases in the UC tax in future years, more employers may elect to participate in the installment option.

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.

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, is 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 benefits began to be incurred by the state and local governments at that time. To the extent this bill requires cities and counties to expend funds to pay state extended benefits for eligible former employee, 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

PCB EDTS 11-01

ORIGINAL

YEAR

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. 443.091, F.S.; requiring
 11 that an applicant for benefits complete an initial skills
 12 review; providing exceptions; amending s. 443.101, F.S.;
 13 clarifying "good cause" for voluntarily leaving
 14 employment; disqualifying a person for benefits due to the
 15 receipt of severance pay; revising provisions relating to
 16 the effects of criminal acts on eligibility for benefits;
 17 amending s. 443.111, F.S.; providing a definition;
 18 reducing the amount and revising the calculation of the
 19 number of weeks of a claimant's benefit eligibility;
 20 amending s. 443.131, F.S.; providing definitions; revising
 21 an employer's unemployment compensation contribution rate
 22 by certain factors; amending s. 443.141, F.S.; providing
 23 an employer payment schedule for 2012, 2013, and 2014
 24 contributions; amending s. 443.151, F.S.; revising
 25 allowable forms of evidence in benefit appeals; revising
 26 the judicial venue for reviewing commission orders;
 27 amending s. 443.171, F.S.; specifying that evidence of
 28 mailing an agency document is based on the date stated on

PCB EDTS 11-01

ORIGINAL

YEAR

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

38 |

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

40 |

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

43 | 213.053 Confidentiality and information sharing.-

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

PCB EDTS 11-01

ORIGINAL

YEAR

57 | the employer's power of attorney upon request.

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

60 | 443.031 Rule of ~~liberal~~ construction.—This chapter may not
61 | be shall be liberally construed to in favor or disfavor of a
62 | claimant of unemployment benefits who is unemployed through no
63 | fault of his or her own. Any doubt as to the proper construction
64 | of this chapter shall be resolved in favor of conformity with
65 | federal law, including, but not limited to, the Federal
66 | Unemployment Tax Act, the Social Security Act, the Wagner-Peyser
67 | Act, and the Workforce Investment Act.

68 | Section 3. New subsection (46) is added to and subsections
69 | (6), (9), (29), and (43) of section 443.036, Florida Statutes,
70 | 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

PCB EDTS 11-01

ORIGINAL

YEAR

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) Willful and deliberate violation of a standard or
 112 regulation of this state by an employee of an employer licensed

PCB EDTS 11-01

ORIGINAL

YEAR

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) 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 of
 119 | 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. Paragraphs (c), (d), (e), (f), (g), and (h) of
 140 | subsection (1) of section 443.091, Florida Statutes, are

PCB EDTS 11-01

ORIGINAL

YEAR

141 redesignated as paragraphs (d), (e), (f), (g), (h), and (i),
 142 respectively, and paragraph (c) is added to that subsection to
 143 read:

144 443.091 Benefit eligibility conditions.—

145 (1) An unemployed individual is eligible to receive
 146 benefits for any week only if the Agency for Workforce
 147 Innovation finds that:

148 (c) She or he has completed an initial skills review using
 149 an online education or training program within 14 days of making
 150 an initial claim for benefits. An online education or training
 151 program, such as that established in s. 1004.99, that is
 152 approved by the Agency for Workforce Innovation and designed to
 153 measure an individual's mastery level of workplace skills meets
 154 the requirement of this paragraph.

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

156 a. Non-Florida residents;

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

158 c. Union members who customarily obtain employment through
 159 a union hiring hall; or

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

162 2. The administrator or operator of the online education or
 163 training program must notify the Agency for Workforce Innovation
 164 when the claimant completes the initial skills review and must
 165 report the results of the claimant's initial skills review to
 166 the regional workforce board or the one-stop career center as
 167 directed by the regional workforce board for use for
 168 reemployment services.

PCB EDTS 11-01

ORIGINAL

YEAR

169 | (d)~~(e)~~ To make continued claims for benefits, she or he is
 170 | reporting to the agency in accordance with its rules. These
 171 | rules may not conflict with s. 443.111(1)(b), including the
 172 | requirement that each claimant continue to report regardless of
 173 | any pending appeal relating to her or his eligibility or
 174 | disqualification for benefits.

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

179 | 1. Notwithstanding any other provision of this paragraph
 180 | or paragraphs (b) and (e), an otherwise eligible individual may
 181 | not be denied benefits for any week because she or he is in
 182 | training with the approval of the agency, or by reason of s.
 183 | 443.101(2) relating to failure to apply for, or refusal to
 184 | accept, suitable work. Training may be approved by the agency in
 185 | accordance with criteria prescribed by rule. A claimant's
 186 | eligibility during approved training is contingent upon
 187 | satisfying eligibility conditions prescribed by rule.

188 | 2. Notwithstanding any other provision of this chapter, an
 189 | otherwise eligible individual who is in training approved under
 190 | s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
 191 | determined ineligible or disqualified for benefits due to her or
 192 | his enrollment in such training or because of leaving work that
 193 | is not suitable employment to enter such training: As used in
 194 | this subparagraph, the term "suitable employment" means work of
 195 | a substantially equal or higher skill level than the worker's
 196 | past adversely affected employment, as defined for purposes of

PCB EDTS 11-01

ORIGINAL

YEAR

197 the Trade Act of 1974, as amended, the wages for which are at
 198 least 80 percent of the worker's average weekly wage as
 199 determined for purposes of the Trade Act of 1974, as amended.

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

204 (f)~~(e)~~ She or he participates in reemployment services,
 205 such as job search assistance services, whenever the individual
 206 has been determined, by a profiling system established by agency
 207 rule, to be likely to exhaust regular benefits and to be in need
 208 of reemployment services.

209 (g)~~(f)~~ She or he has been unemployed for a waiting period
 210 of 1 week. A week may not be counted as a week of unemployment
 211 under this subsection:

212 1. Unless it occurs within the benefit year that includes
 213 the week for which she or he claims payment of benefits.

214 2. If benefits have been paid for that week.

215 3. Unless the individual was eligible for benefits for
 216 that week as provided in this section and s. 443.101, except for
 217 the requirements of this subsection and of s. 443.101(5).

218 (h)~~(g)~~ She or he has been paid wages for insured work
 219 equal to 1.5 times her or his high quarter wages during her or
 220 his base period, except that an unemployed individual is not
 221 eligible to receive benefits if the base period wages are less
 222 than \$3,400.

223 (i)~~(h)~~ She or he submitted to the agency a valid social
 224 security number assigned to her or him. The agency may verify

PCB EDTS 11-01

ORIGINAL

YEAR

225 | the social security number with the United States Social
 226 | Security Administration and may deny benefits if the agency is
 227 | unable to verify the individual's social security number, the
 228 | social security number is invalid, or the social security number
 229 | is not assigned to the individual.

230 | Section 5. New subsection (12) is added to and paragraph
 231 | (a) of subsection (1), and subsections (2), (3), and (9) of
 232 | section 443.101, Florida Statutes, are amended to read:

233 | 443.101 Disqualification for benefits.—An individual shall
 234 | be disqualified for benefits:

235 | (1) (a) For the week in which he or she has voluntarily
 236 | left work without good cause attributable to his or her
 237 | employing unit or in which the individual has been discharged by
 238 | the employing unit for misconduct connected with his or her
 239 | work, based on a finding by the Agency for Workforce Innovation.
 240 | As used in this paragraph, the term "work" means any work,
 241 | whether full-time, part-time, or temporary.

242 | 1. Disqualification for voluntarily quitting continues for
 243 | the full period of unemployment next ensuing after the
 244 | individual has left his or her full-time, part-time, or
 245 | temporary work voluntarily without good cause and until the
 246 | individual has earned income equal to or in excess of 17 times
 247 | his or her weekly benefit amount. As used in this subsection,
 248 | the term "good cause" includes only that cause attributable to
 249 | the employing unit that would compel a reasonable employee to
 250 | cease his or her work or which consists of the individual's
 251 | illness or disability requiring separation from his or her work.
 252 | Any other disqualification may not be imposed. An individual is

PCB EDTS 11-01

ORIGINAL

YEAR

253 | not disqualified under this subsection for voluntarily leaving
 254 | temporary work to return immediately when called to work by the
 255 | permanent employing unit that temporarily terminated his or her
 256 | work within the previous 6 calendar months. An individual is not
 257 | disqualified under this subsection for voluntarily leaving work
 258 | to relocate as a result of his or her military-connected
 259 | spouse's permanent change of station orders, activation orders,
 260 | or unit deployment orders.

261 | 2. Disqualification for being discharged for misconduct
 262 | connected with his or her work continues for the full period of
 263 | unemployment next ensuing after having been discharged and until
 264 | the individual is reemployed and has earned income of at least
 265 | 17 times his or her weekly benefit amount and for not more than
 266 | 52 weeks that immediately follow that week, as determined by the
 267 | agency in each case according to the circumstances in each case
 268 | or the seriousness of the misconduct, under the agency's rules
 269 | adopted for determinations of disqualification for benefits for
 270 | misconduct.

271 | 3. If an individual has provided notification to the
 272 | employing unit of his or her intent to voluntarily leave work
 273 | and the employing unit discharges the individual for reasons
 274 | other than misconduct before the date the voluntary quit was to
 275 | take effect, the individual, if otherwise entitled, shall
 276 | receive benefits from the date of the employer's discharge until
 277 | the effective date of his or her voluntary quit.

278 | 4. If an individual is notified by the employing unit of
 279 | the employer's intent to discharge the individual for reasons
 280 | other than misconduct and the individual quits without good

PCB EDTS 11-01

ORIGINAL

YEAR

281 | cause, as defined in this section, before the date the discharge
 282 | was to take effect, the claimant is ineligible for benefits
 283 | pursuant to s. 443.091(1) (e) ~~(d)~~ for failing to be available for
 284 | work for the week or weeks of unemployment occurring before the
 285 | effective date of the discharge.

286 | (2) If the Agency for Workforce Innovation finds that the
 287 | individual has failed without good cause to actively seek work,
 288 | apply for available suitable work ~~when directed by the agency or~~
 289 | ~~the one-stop career center~~, to accept suitable work when offered
 290 | to him or her, or to return to the individual's customary self-
 291 | employment when directed by the agency, the disqualification
 292 | continues for the full period of unemployment next ensuing after
 293 | he or she failed without good cause to actively seek work, apply
 294 | for available suitable work, to accept suitable work, or to
 295 | return to his or her customary self-employment, under this
 296 | subsection, and until the individual has earned income at least
 297 | 17 times his or her weekly benefit amount. The Agency for
 298 | Workforce Innovation shall by rule adopt criteria for
 299 | determining the "suitability of work," as used in this section.
 300 | The Agency for Workforce Innovation in developing these rules
 301 | shall consider the duration of a claimant's unemployment in
 302 | determining the suitability of work and the suitability of
 303 | proposed rates of compensation for available work. Further,
 304 | after an individual has received 19 ~~25~~ weeks of benefits in a
 305 | single year, suitable work is a job that pays the minimum wage
 306 | and is 120 percent or more of the weekly benefit amount the
 307 | individual is drawing.

308 | (a) In determining whether or not any work is suitable for

PCB EDTS 11-01

ORIGINAL

YEAR

309 an individual, the Agency for Workforce Innovation shall
 310 consider the degree of risk involved to his or her health,
 311 safety, and morals; his or her physical fitness and prior
 312 training; the individual's experience and prior earnings; his or
 313 her length of unemployment and prospects for securing local work
 314 in his or her customary occupation; and the distance of the
 315 available work from his or her residence.

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

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

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

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

328 (c) If the Agency for Workforce Innovation finds that an
 329 individual was rejected for offered employment as the direct
 330 result of a positive, confirmed drug test required as a
 331 condition of employment, the individual is disqualified for
 332 refusing to accept an offer of suitable work.

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

335 (a) Wages in lieu of notice.

336 (b) Severance pay. The number of weeks that an

PCB EDTS 11-01

ORIGINAL

YEAR

337 | individual's severance pay disqualifies the individual is equal
 338 | to the amount of the severance pay divided by that individual's
 339 | average weekly wage received from her or his most recent
 340 | employer, rounded down to the nearest whole number, beginning
 341 | with the week the individual is separated from employment.

342 | (c) ~~1.~~ Compensation for temporary total disability or
 343 | permanent total disability under the workers' compensation law
 344 | of any state or under a similar law of the United States.

345 |
 346 | 2.—However, if the remuneration referred to in paragraphs (a),
 347 | and (b), and(c) is less than the benefits that would otherwise
 348 | be due under this chapter, an individual who is otherwise
 349 | eligible ~~he or she~~ is entitled to receive for that week, ~~if~~
 350 | ~~otherwise eligible,~~ benefits reduced by the amount of the
 351 | remuneration.

352 | (9) If the individual was terminated from his or her work
 353 | for violation of any criminal law punishable by imprisonment, or
 354 | for any dishonest act, in connection with his or her work, as
 355 | follows:

356 | (a) If the Agency for Workforce Innovation or the
 357 | Unemployment Appeals Commission finds that the individual was
 358 | terminated from ~~his or her~~ work for violation of any criminal
 359 | law, under any jurisdiction, which was punishable by
 360 | imprisonment in connection with his or her work or affected his
 361 | or her ability to work, and the individual was convicted, or
 362 | entered a plea of guilty or nolo contendere ~~found guilty of the~~
 363 | ~~offense, made an admission of guilt in a court of law, or~~
 364 | ~~entered a plea of no contest,~~ the individual is not entitled to

PCB EDTS 11-01

ORIGINAL

YEAR

365 | unemployment benefits for up to 52 weeks, pursuant to ~~under~~
 366 | rules adopted by the agency ~~for Workforce Innovation~~, and until
 367 | he or she has earned income of at least 17 times his or her
 368 | weekly benefit amount. If, before an adjudication of guilt, an
 369 | admission of guilt, or a plea of nolo contendere ~~no contest~~, the
 370 | employer proves by competent, substantial evidence to ~~shows~~ the
 371 | agency ~~for Workforce Innovation~~ that the arrest was due to a
 372 | crime against the employer or the employer's business,
 373 | customers, or invitees and, ~~after considering all the evidence,~~
 374 | ~~the Agency for Workforce Innovation finds misconduct in~~
 375 | ~~connection with the individual's work~~, the individual is not
 376 | entitled to unemployment benefits.

377 | (b) If the Agency for Workforce Innovation or the
 378 | Unemployment Appeals Commission finds that the individual was
 379 | terminated from work for any dishonest act in connection with
 380 | his or her work, the individual is not entitled to unemployment
 381 | benefits for up to 52 weeks, under rules adopted by the Agency
 382 | for Workforce Innovation, and until he or she has earned income
 383 | of at least 17 times his or her weekly benefit amount. In
 384 | addition, if the employer terminates an individual as a result
 385 | of a dishonest act in connection with his or her work and the
 386 | Agency for Workforce Innovation finds misconduct in connection
 387 | with his or her work, the individual is not entitled to
 388 | unemployment benefits.

389 |
 390 | With respect to an individual disqualified for benefits, the
 391 | account of the terminating employer, if the employer is in the
 392 | base period, is noncharged at the time the disqualification is

PCB EDTS 11-01

ORIGINAL

YEAR

393 imposed.

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

396 Section 6. Effective April 1, 2011, subsection (5) of
 397 section 443.111, Florida Statutes, is amended to read:

398 443.111 Payment of benefits.—

399 (5) DURATION OF BENEFITS.—

400 (a) As used in this section, the term "Florida average
 401 unemployment rate" means the average of the three months for the
 402 most recent third calendar year quarter of the seasonally
 403 adjusted statewide unemployment rates published by the Agency
 404 for Workforce Innovation.

405 (b)1. Each otherwise eligible individual is entitled
 406 during any benefit year to a total amount of benefits equal to
 407 25 percent of the total wages in his or her base period, not to
 408 exceed the lower of \$5,500 or the product arrived at by
 409 multiplying the weekly benefit amount with the number of weeks
 410 determined in paragraph (c) \$7,150. However, the total amount of
 411 benefits, if not a multiple of \$1, is rounded downward to the
 412 nearest full dollar amount. These benefits are payable at a
 413 weekly rate no greater than the weekly benefit amount.

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

416 1. 12 weeks if the Florida average unemployment rate is at
 417 or below 5.0%.

418 2. An additional week in addition to the 12 weeks for each
 419 0.5% increment in the Florida average unemployment rate above
 420 5%.

PCB EDTS 11-01

ORIGINAL

YEAR

421 3. Up to a maximum of 20 weeks if the Florida average
 422 unemployment rate equals or exceeds 9.0%

423 (d)2- For the purposes of this subsection, wages are
 424 counted as "wages for insured work" for benefit purposes with
 425 respect to any benefit year only if the benefit year begins
 426 after the date the employing unit by whom the wages were paid
 427 has satisfied the conditions of this chapter for becoming an
 428 employer.

429 (e)~~(b)~~ If the remuneration of an individual is not based
 430 upon a fixed period or duration of time or if the individual's
 431 wages are paid at irregular intervals or in a manner that does
 432 not extend regularly over the period of employment, the wages
 433 for any week or for any calendar quarter for the purpose of
 434 computing an individual's right to employment benefits only are
 435 determined in the manner prescribed by rule. These rules, to the
 436 extent practicable, must secure results reasonably similar to
 437 those that would prevail if the individual were paid her or his
 438 wages at regular intervals.

439 Section 7. Effective upon this act becoming law and
 440 retroactive to June 30, 2010, paragraphs (b) and (e) of
 441 subsection (3) of section 443.131, Florida Statutes, are amended
 442 to read:

443 443.131 Contributions.—

444 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
 445 EXPERIENCE.—

446 (b) Benefit ratio.—

447 1. As used in this paragraph, the term "annual payroll"
 448 means the calendar quarter taxable payroll reported to the tax

PCB EDTS 11-01

ORIGINAL

YEAR

449 collection service provider for the quarters used in computing
 450 the benefit ratio. The term does not include a penalty resulting
 451 from the untimely filing of required wage and tax reports. All
 452 of the taxable payroll reported to the tax collection service
 453 provider by the end of the quarter preceding the quarter for
 454 which the contribution rate is to be computed must be used in
 455 the computation.

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

459 (a) 1.0 for benefits paid prior to July 1, 2007.

460 (b) 0.9 for benefits paid during the period beginning on
 461 July 1, 2007, and ending March 31, 2011.

462 (c) 1.0 for benefits paid after March 31, 2011.

463 3.2. For each calendar year, the tax collection service
 464 provider shall compute a benefit ratio for each employer whose
 465 employment record was chargeable for benefits during the 12
 466 consecutive quarters ending June 30 of the calendar year
 467 preceding the calendar year for which the benefit ratio is
 468 computed. An employer's benefit ratio is the quotient obtained
 469 by dividing the total benefits charged to the employer's
 470 employment record during the 3-year period ending June 30 of the
 471 preceding calendar year by the total of the employer's annual
 472 payroll for the 3-year period ending June 30 of the preceding
 473 calendar year. The benefit ratio shall be computed to the fifth
 474 decimal place and rounded to the fourth decimal place.

475 4.3. The tax collection service provider shall compute a
 476 benefit ratio for each employer who was not previously eligible

PCB EDTS 11-01

ORIGINAL

YEAR

477 | under subparagraph 3.2, whose contribution rate is set at the
 478 | initial contribution rate in paragraph (2)(a), and whose
 479 | employment record was chargeable for benefits during at least 8
 480 | calendar quarters immediately preceding the calendar quarter for
 481 | which the benefit ratio is computed. The employer's benefit
 482 | ratio is the quotient obtained by dividing the total benefits
 483 | charged to the employer's employment record during the first 6
 484 | of the 8 completed calendar quarters immediately preceding the
 485 | calendar quarter for which the benefit ratio is computed by the
 486 | total of the employer's annual payroll during the first 7 of the
 487 | 9 completed calendar quarters immediately preceding the calendar
 488 | quarter for which the benefit ratio is computed. The benefit
 489 | ratio shall be computed to the fifth decimal place and rounded
 490 | to the fourth decimal place and applies for the remainder of the
 491 | calendar year. The employer must subsequently be rated on an
 492 | annual basis using up to 12 calendar quarters of benefits
 493 | charged and up to 12 calendar quarters of annual payroll. That
 494 | employer's benefit ratio is the quotient obtained by dividing
 495 | the total benefits charged to the employer's employment record
 496 | by the total of the employer's annual payroll during the
 497 | quarters used in his or her first computation plus the
 498 | subsequent quarters reported through June 30 of the preceding
 499 | calendar year. Each subsequent calendar year, the rate shall be
 500 | computed under subparagraph 2. The tax collection service
 501 | provider shall assign a variation from the standard rate of
 502 | contributions in paragraph (c) on a quarterly basis to each
 503 | eligible employer in the same manner as an assignment for a
 504 | calendar year under paragraph (e).

PCB EDTS 11-01

ORIGINAL

YEAR

505 (e) Assignment of variations from the standard rate.—As
 506 used in this paragraph, the terms "total benefit payments",
 507 "benefits paid to an individual", and "benefits charged to the
 508 employment record of an employer" mean the amount of benefits
 509 paid to individuals multiplied by:

- 510 a. 1.0 for benefits paid prior to July 1, 2007;
- 511 b. 0.9 for benefits paid during the period beginning on
 512 July 1, 2007, and ending March 31, 2011;
- 513 c. 1.0 for benefits paid after March 31, 2011.

514 For the calculation of contribution rates effective January 1,
 515 2010, and thereafter:

516 1. The tax collection service provider shall assign a
 517 variation from the standard rate of contributions for each
 518 calendar year to each eligible employer. In determining the
 519 contribution rate, varying from the standard rate to be assigned
 520 each employer, adjustment factors computed under sub-
 521 subparagraphs a.-d. are added to the benefit ratio. This
 522 addition shall be accomplished in two steps by adding a variable
 523 adjustment factor and a final adjustment factor. The sum of
 524 these adjustment factors computed under sub-subparagraphs a.-d.
 525 shall first be algebraically summed. The sum of these adjustment
 526 factors shall next be divided by a gross benefit ratio
 527 determined as follows: Total benefit payments for the 3-year
 528 period described in subparagraph (b)~~3.2~~ are charged to
 529 employers eligible for a variation from the standard rate, minus
 530 excess payments for the same period, divided by taxable payroll
 531 entering into the computation of individual benefit ratios for
 532 the calendar year for which the contribution rate is being

PCB EDTS 11-01

ORIGINAL

YEAR

533 | computed. The ratio of the sum of the adjustment factors
 534 | computed under sub-subparagraphs a.-d. to the gross benefit
 535 | ratio is multiplied by each individual benefit ratio that is
 536 | less than the maximum contribution rate to obtain variable
 537 | adjustment factors; except that if the sum of an employer's
 538 | individual benefit ratio and variable adjustment factor exceeds
 539 | the maximum contribution rate, the variable adjustment factor is
 540 | reduced in order for the sum to equal the maximum contribution
 541 | rate. The variable adjustment factor for each of these employers
 542 | is multiplied by his or her taxable payroll entering into the
 543 | computation of his or her benefit ratio. The sum of these
 544 | products is divided by the taxable payroll of the employers who
 545 | entered into the computation of their benefit ratios. The
 546 | resulting ratio is subtracted from the sum of the adjustment
 547 | factors computed under sub-subparagraphs a.-d. to obtain the
 548 | final adjustment factor. The variable adjustment factors and the
 549 | final adjustment factor must be computed to five decimal places
 550 | and rounded to the fourth decimal place. This final adjustment
 551 | factor is added to the variable adjustment factor and benefit
 552 | ratio of each employer to obtain each employer's contribution
 553 | rate. An employer's contribution rate may not, however, be
 554 | rounded to less than 0.1 percent.

555 | a. An adjustment factor for noncharge benefits is computed
 556 | to the fifth decimal place and rounded to the fourth decimal
 557 | place by dividing the amount of noncharge benefits during the 3-
 558 | year period described in subparagraph (b) 3.2 by the taxable
 559 | payroll of employers eligible for a variation from the standard
 560 | rate who have a benefit ratio for the current year which is less

PCB EDTS 11-01

ORIGINAL

YEAR

561 | than the maximum contribution rate. For purposes of computing
 562 | this adjustment factor, the taxable payroll of these employers
 563 | is the taxable payrolls for the 3 years ending June 30 of the
 564 | current calendar year as reported to the tax collection service
 565 | provider by September 30 of the same calendar year. As used in
 566 | this sub-subparagraph, the term "noncharge benefits" means
 567 | benefits paid to an individual from the Unemployment
 568 | Compensation Trust Fund, but which were not charged to the
 569 | employment record of any employer.

570 | b. An adjustment factor for excess payments is computed to
 571 | the fifth decimal place, and rounded to the fourth decimal place
 572 | by dividing the total excess payments during the 3-year period
 573 | described in subparagraph (b)3.2 by the taxable payroll of
 574 | employers eligible for a variation from the standard rate who
 575 | have a benefit ratio for the current year which is less than the
 576 | maximum contribution rate. For purposes of computing this
 577 | adjustment factor, the taxable payroll of these employers is the
 578 | same figure used to compute the adjustment factor for noncharge
 579 | benefits under sub-subparagraph a. As used in this sub-
 580 | subparagraph, the term "excess payments" means the amount of
 581 | benefits charged to the employment record of an employer during
 582 | the 3-year period described in subparagraph (b)3.2, less the
 583 | product of the maximum contribution rate and the employer's
 584 | taxable payroll for the 3 years ending June 30 of the current
 585 | calendar year as reported to the tax collection service provider
 586 | by September 30 of the same calendar year. As used in this sub-
 587 | subparagraph, the term "total excess payments" means the sum of
 588 | the individual employer excess payments for those employers that

PCB EDTS 11-01

ORIGINAL

YEAR

589 | were eligible for assignment of a contribution rate different
 590 | from the standard rate.

591 | c. With respect to computing a positive adjustment factor:

592 | (I) Beginning January 1, 2012, if the balance of the
 593 | Unemployment Compensation Trust Fund on September 30 of the
 594 | calendar year immediately preceding the calendar year for which
 595 | the contribution rate is being computed is less than 4 percent
 596 | of the taxable payrolls for the year ending June 30 as reported
 597 | to the tax collection service provider by September 30 of that
 598 | calendar year, a positive adjustment factor shall be computed.
 599 | The positive adjustment factor is computed annually to the fifth
 600 | decimal place and rounded to the fourth decimal place by
 601 | dividing the sum of the total taxable payrolls for the year
 602 | ending June 30 of the current calendar year as reported to the
 603 | tax collection service provider by September 30 of that calendar
 604 | year into a sum equal to one-third of the difference between the
 605 | balance of the fund as of September 30 of that calendar year and
 606 | the sum of 5 percent of the total taxable payrolls for that
 607 | year. The positive adjustment factor remains in effect for
 608 | subsequent years until the balance of the Unemployment
 609 | Compensation Trust Fund as of September 30 of the year
 610 | immediately preceding the effective date of the contribution
 611 | rate equals or exceeds 5 percent of the taxable payrolls for the
 612 | year ending June 30 of the current calendar year as reported to
 613 | the tax collection service provider by September 30 of that
 614 | calendar year.

615 | (II) Beginning January 1, 2015, and for each year
 616 | thereafter, the positive adjustment shall be computed by

PCB EDTS 11-01

ORIGINAL

YEAR

617 dividing the sum of the total taxable payrolls for the year
 618 ending June 30 of the current calendar year as reported to the
 619 tax collection service provider by September 30 of that calendar
 620 year into a sum equal to one-fourth of the difference between
 621 the balance of the fund as of September 30 of that calendar year
 622 and the sum of 5 percent of the total taxable payrolls for that
 623 year. The positive adjustment factor remains in effect for
 624 subsequent years until the balance of the Unemployment
 625 Compensation Trust Fund as of September 30 of the year
 626 immediately preceding the effective date of the contribution
 627 rate equals or exceeds 4 percent of the taxable payrolls for the
 628 year ending June 30 of the current calendar year as reported to
 629 the tax collection service provider by September 30 of that
 630 calendar year.

631 d. If, beginning January 1, 2015, and each year
 632 thereafter, the balance of the Unemployment Compensation Trust
 633 Fund as of September 30 of the year immediately preceding the
 634 calendar year for which the contribution rate is being computed
 635 exceeds 5 percent of the taxable payrolls for the year ending
 636 June 30 of the current calendar year as reported to the tax
 637 collection service provider by September 30 of that calendar
 638 year, a negative adjustment factor must be computed. The
 639 negative adjustment factor shall be computed annually beginning
 640 on January 1, 2015, and each year thereafter, to the fifth
 641 decimal place and rounded to the fourth decimal place by
 642 dividing the sum of the total taxable payrolls for the year
 643 ending June 30 of the current calendar year as reported to the
 644 tax collection service provider by September 30 of the calendar

PCB EDTS 11-01

ORIGINAL

YEAR

645 | year into a sum equal to one-fourth of the difference between
 646 | the balance of the fund as of September 30 of the current
 647 | calendar year and 5 percent of the total taxable payrolls of
 648 | that year. The negative adjustment factor remains in effect for
 649 | subsequent years until the balance of the Unemployment
 650 | Compensation Trust Fund as of September 30 of the year
 651 | immediately preceding the effective date of the contribution
 652 | rate is less than 5 percent, but more than 4 percent of the
 653 | taxable payrolls for the year ending June 30 of the current
 654 | calendar year as reported to the tax collection service provider
 655 | by September 30 of that calendar year. The negative adjustment
 656 | authorized by this section is suspended in any calendar year in
 657 | which repayment of the principal amount of an advance received
 658 | from the federal Unemployment Compensation Trust Fund under 42
 659 | U.S.C. s. 1321 is due to the Federal Government.

660 | e. The maximum contribution rate that may be assigned to
 661 | an employer is 5.4 percent, except employers participating in an
 662 | approved short-time compensation plan may be assigned a maximum
 663 | contribution rate that is 1 percent greater than the maximum
 664 | contribution rate for other employers in any calendar year in
 665 | which short-time compensation benefits are charged to the
 666 | employer's employment record.

667 | f. As used in this subsection, "taxable payroll" shall be
 668 | determined by excluding any part of the remuneration paid to an
 669 | individual by an employer for employment during a calendar year
 670 | in excess of the first \$7,000. Beginning January 1, 2012,
 671 | "taxable payroll" shall be determined by excluding any part of
 672 | the remuneration paid to an individual by an employer for

PCB EDTS 11-01

ORIGINAL

YEAR

673 employment during a calendar year as described in s.
 674 443.1217(2). For the purposes of the employer rate calculation
 675 that will take effect in January 1, 2012, and in January 1,
 676 2013, the tax collection service provider shall use the data
 677 available for taxable payroll from 2009 based on excluding any
 678 part of the remuneration paid to an individual by an employer
 679 for employment during a calendar year in excess of the first
 680 \$7,000, and from 2010 and 2011, the data available for taxable
 681 payroll based on excluding any part of the remuneration paid to
 682 an individual by an employer for employment during a calendar
 683 year in excess of the first \$8,500.

684 2. If the transfer of an employer's employment record to
 685 an employing unit under paragraph (f) which, before the
 686 transfer, was an employer, the tax collection service provider
 687 shall recompute a benefit ratio for the successor employer based
 688 on the combined employment records and reassign an appropriate
 689 contribution rate to the successor employer effective on the
 690 first day of the calendar quarter immediately after the
 691 effective date of the transfer.

692 Section 8. Present paragraph (f) of subsection (1) of
 693 section 443.141, Florida Statutes, is redesignated as paragraph
 694 (g), and new paragraph (f) is added to that subsection, to read:

695 443.141 Collection of contributions and reimbursements.—

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

698 (f) Payments for 2012, 2013, and 2014 Contributions.—For
 699 an annual administrative fee not to exceed \$5, a contributing
 700 employer may pay its quarterly contributions due for wages paid

PCB EDTS 11-01

ORIGINAL

YEAR

701 | in the first three quarters of 2012, 2013, and 2014 in equal
 702 | installments if those contributions are paid as follows:
 703 | 1. For contributions due for wages paid in the first
 704 | quarter of each year, one-fourth of the contributions due must
 705 | be paid on or before April 30, one-fourth must be paid on or
 706 | before July 31, one-fourth must be paid on or before October 31,
 707 | and one-fourth must be paid on or before December 31.
 708 | 2. In addition to the payments specified in subparagraph
 709 | 1., for contributions due for wages paid in the second quarter
 710 | of each year, one-third of the contributions due must be paid on
 711 | or before July 31, one-third must be paid on or before October
 712 | 31, and one-third must be paid on or before December 31.
 713 | 3. In addition to the payments specified in subparagraphs
 714 | 1. and 2., for contributions due for wages paid in the third
 715 | quarter of each year, one-half of the contributions due must be
 716 | paid on or before October 31, and one-half must be paid on or
 717 | before December 31.
 718 | 4. The annual administrative fee assessed for electing to
 719 | pay under the installment method shall be collected at the time
 720 | the employer makes the first installment payment each year. The
 721 | fee shall be segregated from the payment and deposited into the
 722 | Operating Trust Fund of the Department of Revenue.
 723 | 5. Interest does not accrue on any contribution that
 724 | becomes due for wages paid in the first three quarters of each
 725 | year if the employer pays the contribution in accordance with
 726 | subparagraphs 1.-4. Interest and fees continue to accrue on
 727 | prior delinquent contributions and commence accruing on all
 728 | contributions due for wages paid in the first three quarters of

PCB EDTS 11-01

ORIGINAL

YEAR

729 each year which are not paid in accordance with subparagraphs
 730 1.-3. Penalties may be assessed in accordance with this chapter.
 731 The contributions due for wages paid in the fourth quarter of
 732 2012, 2013, and 2014 are not affected by this paragraph and are
 733 due and payable in accordance with this chapter.

734 Section 9. Paragraphs (b) and (d) of subsection (3) and
 735 paragraphs (b) and (e) of subsection (4) of section 443.151,
 736 Florida Statutes, are amended to read:

737 443.151 Procedure concerning claims.-

738 (3) DETERMINATION OF ELIGIBILITY.-

739 (b) Monetary determinations.-In addition to the notice of
 740 claim, the Agency for Workforce Innovation must ~~shall~~ also
 741 promptly provide an initial monetary determination to the
 742 claimant and each base period employer whose account is subject
 743 to being charged for its respective share of benefits on the
 744 claim. The monetary determination must include a statement of
 745 whether and in what amount the claimant is entitled to benefits,
 746 and, in the event of a denial, must state the reasons for the
 747 denial. A monetary determination for the first week of a benefit
 748 year must also include a statement of whether the claimant was
 749 paid the wages required under s. 443.091(1) (h) ~~(g)~~ and, if so,
 750 the first day of the benefit year, the claimant's weekly benefit
 751 amount, and the maximum total amount of benefits payable to the
 752 claimant for a benefit year. The monetary determination is final
 753 unless within 20 days after the mailing of the notices to the
 754 parties' last known addresses, or in lieu of mailing, within 20
 755 days after the delivery of the notices, an appeal or written
 756 request for reconsideration is filed by the claimant or other

PCB EDTS 11-01

ORIGINAL

YEAR

757 party entitled to notice. The agency may adopt rules as
 758 necessary to implement the processes described in this paragraph
 759 relating to notices of monetary determinations and the appeals
 760 or reconsideration requests filed in response to such notices.

761 (d) Determinations in labor dispute cases.—If a ~~Whenever~~
 762 ~~any~~ claim involves a labor dispute described in s. 443.101(4),
 763 the Agency for Workforce Innovation shall promptly assign the
 764 claim to a special examiner who shall make a determination on
 765 the issues involving unemployment due to the labor dispute. The
 766 special examiner shall make the determination after an
 767 investigation, as necessary. The claimant or another party
 768 entitled to notice of the determination may appeal a
 769 determination under subsection (4).

770 (4) APPEALS.—

771 (b) Filing and hearing.—

772 1. The claimant or any other party entitled to notice of a
 773 determination may appeal an adverse determination to an appeals
 774 referee within 20 days after the date of mailing of the notice
 775 to her or his last known address or, if the notice is not
 776 mailed, within 20 days after the date of delivery of the notice.

777 2. Unless the appeal is untimely or withdrawn or review is
 778 initiated by the commission, the appeals referee, after mailing
 779 all parties and attorneys of record a notice of hearing at least
 780 10 days before the date of hearing, notwithstanding the 14-day
 781 notice requirement in s. 120.569(2)(b), may only affirm, modify,
 782 or reverse the determination. An appeal may not be withdrawn
 783 without the permission of the appeals referee.

784 3. However, when an appeal appears to have been filed

PCB EDTS 11-01

ORIGINAL

YEAR

785 after the permissible time limit, the Office of Appeals may
 786 issue an order to show cause to the appellant, requiring the
 787 appellant to show why the appeal should not be dismissed as
 788 untimely. If the appellant does not, within 15 days after the
 789 mailing date of the order to show cause, provide written
 790 evidence of timely filing or good cause for failure to appeal
 791 timely, the appeal shall be dismissed.

792 4. When an appeal involves a question of whether services
 793 were performed by a claimant in employment or for an employer,
 794 the referee must give special notice of the question and of the
 795 pendency of the appeal to the employing unit and to the Agency
 796 for Workforce Innovation, both of which become parties to the
 797 proceeding.

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

801 b. Irrelevant, immaterial, or unduly repetitious evidence
 802 shall be excluded, but all other evidence of a type commonly
 803 relied upon by reasonably prudent persons in the conduct of
 804 their affairs shall be admissible, whether or not such evidence
 805 would be admissible in a trial in the courts of the state.

806 c. Hearsay evidence may be used for the purpose of
 807 supplementing or explaining other evidence, or to support a
 808 finding if it would be admissible over objection in civil
 809 actions. Notwithstanding paragraph 120.57(1)(c), hearsay
 810 evidence may support a finding of fact if:

811 i. The party against whom it is offered has a reasonable
 812 opportunity to review such evidence prior to the hearing; and

PCB EDTS 11-01

ORIGINAL

YEAR

813 ii. The appeals referee or special deputy determines,
 814 after considering all relevant facts and circumstances, that the
 815 evidence is trustworthy and probative, and that the interests of
 816 justice will best be served by its admission into evidence.

817 6. The parties must be notified promptly of the referee's
 818 decision. The referee's decision is final unless further review
 819 is initiated under paragraph (c) within 20 days after the date
 820 of mailing notice of the decision to the party's last known
 821 address or, in lieu of mailing, within 20 days after the
 822 delivery of the notice.

823 (e) Judicial review.—Orders of the commission entered
 824 under paragraph (c) are subject to appellate review only by
 825 notice of appeal in the district court of appeal in the
 826 appellate district in which a claimant resides or the job
 827 separation arose the issues involved were decided by an appeals
 828 referee. However, if the notice of appeal is submitted to the
 829 commission, the commission shall file the notice in the district
 830 court of appeal in the appellate district in which the order was
 831 issued. Notwithstanding chapter 120, the commission is a party
 832 respondent to every such proceeding. The Agency for Workforce
 833 Innovation may initiate judicial review of orders in the same
 834 manner and to the same extent as any other party.

835 Section 10. Section (10) is added to section 443.171,
 836 Florida Statutes, to read:

837 443.171 Agency for Workforce Innovation and commission;
 838 powers and duties; records and reports; proceedings; state-
 839 federal cooperation.—

840 (10) EVIDENCE OF MAILING.--The existence of a mailing date

PCB EDTS 11-01

ORIGINAL

YEAR

841 | on any notice, determination, decision, order, or other document
 842 | mailed by the Agency for Workforce Innovation or its tax
 843 | collection service provider pursuant to this chapter creates a
 844 | rebuttable presumption that such notice, determination, order,
 845 | or other document was mailed on the date indicated.

846 | Section 11. Notwithstanding the expiration date contained
 847 | in section 1 of chapter 2010-90, Laws of Florida, operating
 848 | retroactive to June 2, 2010, and expiring January 4, 2012, .
 849 | section 443.1117, Florida Statutes, is revived, readopted, and
 850 | amended to read:

851 | 443.1117 Temporary extended benefits.—

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

856 | (2) DEFINITIONS.—As used in ~~For the purposes of~~ this
 857 | section, the term:

858 | (a) "Regular benefits" and "extended benefits" have the
 859 | same meaning as in s. 443.1115.

860 | (b) "Eligibility period" means the weeks in an
 861 | individual's benefit year or emergency benefit period which
 862 | begin in an extended benefit period and, if the benefit year or
 863 | emergency benefit period ends within that extended benefit
 864 | period, any subsequent weeks beginning in that period.

865 | (c) "Emergency benefits" means Emergency Unemployment
 866 | Compensation paid pursuant to Pub. L. No. 110-252, Pub. L. No.
 867 | 110-449, Pub. L. No. 111-5, Pub. L. No. 111-92, and Pub. L. No.

PCB EDTS 11-01

ORIGINAL

YEAR

868 | 111-118, Pub. L. No. 111-144, and Pub. L. No. 111-157, Pub. L.
 869 | No. 111-205, and Pub. L. No. 111-312.

- 870 | (d) "Extended benefit period" means a period that:
- 871 | 1. Begins with the third week after a week for which there
- 872 | is a state "on" indicator; and
- 873 | 2. Ends with any of the following weeks, whichever occurs
- 874 | later:
- 875 | a. The third week after the first week for which there is
- 876 | a state "off" indicator;
- 877 | b. The 13th consecutive week of that period.

878 |

879 | However, an extended benefit period may not begin by reason of a

880 | state "on" indicator before the 14th week after the end of a

881 | prior extended benefit period that was in effect for this state.

882 | (e) "Emergency benefit period" means the period during

883 | which an individual receives emergency benefits ~~as defined in~~

884 | ~~paragraph (e).~~

885 | (f) "Exhaustee" means an individual who, for any week of

886 | unemployment in her or his eligibility period:

- 887 | 1. Has received, before that week, all of the regular
- 888 | benefits and emergency benefits, if any, available under this
- 889 | chapter or any other law, including dependents' allowances and
- 890 | benefits payable to federal civilian employees and ex-
- 891 | servicemembers under 5 U.S.C. ss. 8501-8525, in the current
- 892 | benefit year or emergency benefit period that includes that
- 893 | week. For the purposes of this subparagraph, an individual has
- 894 | received all of the regular benefits and emergency benefits, if
- 895 | any, available even if ~~although~~, as a result of a pending appeal

PCB EDTS 11-01

ORIGINAL

YEAR

896 | for wages paid for insured work which were not considered in the
 897 | original monetary determination in the benefit year, she or he
 898 | may subsequently be determined to be entitled to added regular
 899 | benefits;

900 | 2. Had a benefit year that ~~which~~ expired before that week,
 901 | and was paid no, or insufficient, wages for insured work on the
 902 | basis of which she or he could establish a new benefit year that
 903 | includes that week; and

904 | 3.a. Has no right to unemployment benefits or allowances
 905 | under the Railroad Unemployment Insurance Act or other federal
 906 | laws as specified in regulations issued by the United States
 907 | Secretary of Labor; and

908 | b. Has not received and is not seeking unemployment
 909 | benefits under the unemployment compensation law of Canada; but
 910 | if an individual is seeking those benefits and the appropriate
 911 | agency finally determines that she or he is not entitled to
 912 | benefits under that law, she or he is considered an exhaustee.

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

920 | 1. Equals or exceeds 110 percent of the average of those
 921 | rates for the corresponding 3-month period ending in any or all
 922 | ~~each~~ of the preceding 32 calendar years; and

923 | 2. Equals or exceeds 6.5 percent.

PCB EDTS 11-01

ORIGINAL

YEAR

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

931 1. Equals or exceeds 110 percent of the average of those
 932 rates for the corresponding 3-month period ending in any or all
 933 ~~each~~ of the preceding 32 calendar years; and

934 2. Equals or exceeds 8 percent.

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

938 (3) TOTAL EXTENDED BENEFIT AMOUNT.—Except as provided in
 939 subsection (4):

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

944 1. Fifty percent of the total regular benefits payable
 945 under this chapter in the applicable benefit year; or

946 2. Thirteen times the weekly benefit amount payable under
 947 this chapter for a week of total unemployment in the applicable
 948 benefit year.

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

PCB EDTS 11-01

ORIGINAL

YEAR

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

954 | 2. Twenty times the weekly benefit amount payable under
 955 | this chapter for a week of total unemployment in the applicable
 956 | benefit year.

957 | (4) EFFECT ON TRADE READJUSTMENT.—Notwithstanding any
 958 | other provision of this chapter, if the benefit year of an
 959 | individual ends within an extended benefit period, the number of
 960 | weeks of extended benefits the individual is entitled to receive
 961 | in that extended benefit period for weeks of unemployment
 962 | beginning after the end of the benefit year, except as provided
 963 | in this section, is reduced, but not to below zero, by the
 964 | number of weeks for which the individual received, within that
 965 | benefit year, trade readjustment allowances under the Trade Act
 966 | of 1974, as amended.

967 | Section 12. The provisions of s. 443.1117, Florida
 968 | Statutes, as revived, readopted, and amended by this act, apply
 969 | only to claims for weeks of unemployment in which an exhaustee
 970 | establishes entitlement to extended benefits pursuant to that
 971 | section which are established for the period between December
 972 | 17, 2010, and January 4, 2012.

973 | Section 13. The Legislature finds that this act fulfills
 974 | an important state interest.

975 | Section 14. Unless otherwise specified within this act,
 976 | this act shall take effect upon becoming a law.