SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1740

SPONSOR: Senator Dyer

SUBJECT: Unemployment Compensation

DATE: April 16, 2001 REVISED: 04/17/01

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gillespie	Maclure	CM	Fav/2 amendments
2.			AGG	
3.			AP	
4.				
5.				
6.				

I. Summary:

Senate Bill 1740 requires the Division of Unemployment Compensation (division) within the Agency for Workforce Innovation to determine monetary eligibility for unemployment compensation using wages from an "alternative base period" (the last four completed calendar quarters) for those individuals who are ineligible to receive benefits under current law using wages from the "base period" (the first four of the last five completed calendar quarters). The bill applies to claims commencing after January 1, 2002. The bill provides that wages used in a base period to establish eligibility for unemployment compensation may not be used to establish eligibility on a subsequent claim. If the necessary wage information is not available to the division through an employer's quarterly wage and tax reports, the bill also provides that the division will request the wage information from the employer. Employers are required to respond to a request for wage information within 10 days.

This bill substantially amends section 443.036, Florida Statutes.

II. Present Situation:

Unemployment Compensation in Florida

Florida's unemployment compensation system provides temporary income payments to make up part of the wages lost by workers who lose their jobs through no fault of their own. The objective of the program is to provide a cushion to absorb some of the shock of unemployment to jobless workers and their families.[1] The Division of Unemployment Compensation (division) is

[1] *See* s. 443.021, F.S.

responsible for administering the Florida Unemployment Compensation Law.[2] In the Workforce Innovation Act of 2000, the Legislature transferred the division from the Department of Labor and Employment Security to the Agency for Workforce Innovation[3] and required claims for unemployment compensation to be filed through the one-stop delivery system.[4] Unemployment taxes are collected by the Department of Revenue under contract with the Agency for Workforce Innovation.[5]

Eligibility for Unemployment Compensation

Under current law, eligibility for unemployment compensation is based on the work performed during an individual's "base period."[6] The individual's base period is "the first four of the last five completed calendar quarters" immediately before the individual filed a valid claim for benefits.[7] (*See* Table 1 below.) To qualify for unemployment compensation, an individual must:[8]

- Have been paid wages in two or more calendar quarters in the base period,
- Have total base period wages of at least 1.5 times the wages in the quarter with the highest earnings, and
- Have been paid at least $3,400 during the base period.

(Table 1) Base Period Chart[9]

Year preceding prior year		**Prior year**				**Current year**			
July Aug. Sept.	Oct. Nov. Dec.	Jan. Feb. Mar.	Apr. May June	July Aug. Sept.	Oct. Nov. Dec.	Jan. Feb. Mar.	Apr. May June	July Aug. Sept.	Oct. Nov. Dec.
	BASE PERIOD				Lag quarter	Claim filed			
		BASE PERIOD				Lag quarter	Claim filed		
			BASE PERIOD				Lag quarter	Claim filed	
				BASE PERIOD				Lag quarter	Claim filed

[2] Chapter 443, F.S.

[3] Section 11(4)(f), ch. 2000-165, L.O.F.

[4] *See* s. 445.009(1)(i), F.S.

[5] Section 11(4)(f), ch. 2000-165, L.O.F.

[6] Section 443.111(2)(a), F.S.

[7] Section 443.036(7) & (8), F.S.

[8] Section 443.111(2), F.S.

[9] Agency for Workforce Innovation, *Unemployment Compensation Benefit Rights Information: How Much Am I Entitled To*, *at* http://www2.myflorida.com/awi/unemployment/bri/how_much.htm (last visited Apr. 13, 2001).

Under current law, the fifth completed calendar quarter – or "lag quarter" – is not used to determine monetary eligibility. Because the most recent quarter of work counts neither toward the two-quarter requirement nor the $3,400 requirement, workers who have been employed in only two quarters may not be able to establish eligibility. For example, an employee who has only worked during the two quarters immediately before filing of a claim would not qualify for benefits even if he or she earned more than $3,400. Consequently, some seasonal workers and short-term members of the labor market may not be able to establish monetary eligibility for benefits calculated using the current base period.

Employer Wage and Tax Reports

Contributory employers are required to file quarterly wage and tax reports with the division no later than the last day of the month following each calendar quarter (first month of the three-month lag quarter).[10] Similarly, reimbursable employers are required to file quarterly reports. These reports identify the wages paid at regular and irregular intervals, including commissions and bonuses and the cash value of all remuneration paid in any medium other than cash.[11] The reports, therefore, provide the wage data for each individual's base period, which is used to determine the amount of benefits that are paid to an individual worker. According to the Agency for Workforce Innovation, the division generally uses the second and third months of the lag quarter to process the 370,000 employer reports it receives and enter the wage information into its database in preparation for claims that will be filed during the next quarter. Thus, under current law, the lag quarter is not used to determine monetary eligibility for unemployment compensation because the division lacks the necessary wage data at the time a claim is filed.

For example, employer reports for the fourth quarter of 2000 were due by the end of January 2001. Data entry of wage data began in February and was due to be completed at the end of March 2001. The earliest filing date for a claim incorporating the wages an individual earned during the fourth quarter of 2000 currently was April 1, 2001. The base period established during the second quarter of 2001 (April through June) will be based on employment during the four quarters from January through December 2000. The lag quarter for those claims will be the first calendar quarter of 2001 (January through March).

Financing Unemployment Compensation in Florida

The Florida Unemployment Compensation Law provides three methods of financing unemployment compensation.[12] Compensation paid to private sector employees is financed through the contributory method.[13] Compensation paid to public sector employees[14] is financed

[10] Rule 38B-2025, F.A.C.

[11] *Id*.

[12] Section 443.131, F.S.

[13] Section 443.131(3), F.S.

[14] Public sector employees include state employees, employees of political subdivisions of the state (including counties and municipalities), and employees of certain nonprofit organizations. (s. 443.131(4) & (5), F.S.)

through the reimbursement method[15] or through the Public Employers Unemployment Compensation Benefit Account.[16] Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method.[17]

The reimbursement method is a self-insurance system that requires payments to the Unemployment Compensation Trust Fund only when compensation is paid based on an individual's service to the employer.[18] If compensation is not paid based on that service, the employer is not required to make payments to the trust fund.[19]

Under the contributory method, employers pay tax quarterly on the first $7,000 of each employee's annual wages.[20] The method of determining varying tax rates assigned to taxpaying employers is referred to as "experience rating." The purpose of experience rating under the Florida Unemployment Compensation Law is to keep the Unemployment Compensation Trust Fund stabilized between 4 and 5 percent of the taxable payrolls reported by all employers, and to ensure that employers with higher unemployment compensation costs pay at a higher tax rate.

An employer's experience rate is based on the employer's own employment record in relation to the employment records of all other employers. The rate at which taxes are paid is based on the employer's experience with unemployment during the three-year period before the effective date of the tax rate. An employer's initial tax rate is 2.7 percent.[21] After an employer is subject to benefit charges for eight calendar quarters, the tax rate may be adjusted to a low of 0.1 percent[22] or a high of 5.4 percent.[23] The adjustment in the tax rate is determined by calculating several factors.

The benefit ratio is the most significant factor in determining the tax rate, and it is the factor over which the employer has control. The benefit ratio is the cost of benefit charges as a percentage of the employer's taxable wages and is calculated by dividing the total compensation charged to the employer's record over the preceding three years by the amount of the employer's payroll during the same three-year period.[24]

[15] Section 443.131(5), F.S.

[16] Section 443.131(6), F.S.

[17] Section 443.131(4), F.S.

[18] *Id.*; s. 443.131(5), F.S.

[19] *See id.*

[20] Sections 443.036(40)(b)1. & 443.131(2), F.S.

[21] Section 443.131(2)(a) & (3)(b)2., F.S.

[22] Section 443.131(3)(e)1., F.S.

[23] Section 443.131(3)(e)1.d., F.S.

[24] Section 443.131(3)(b)2., F.S.

When an individual receives unemployment compensation based on the wages an employer paid the worker, benefit charges are assigned to that employer's account. The account of each employer who paid an individual $100 or more during the period of a claim is subject to being charged a proportionate share of the compensation paid to the individual.[25] However, an employer can obtain relief from benefit charges (noncharging) by responding to a notification of the claim with information concerning the reason for the individual's separation from work or refusal to work.[26] In general, an employer can earn a lower tax rate by limiting the amount of benefit charges to the employer's account.

Compensation that cannot be charged against any employer's account is recovered through adjustment factors that socialize the cost of this compensation among all contributory employers who, during the previous three years, had benefit experience.[27] These adjustment factors include the noncharge adjustment factor, the excess payments adjustment factor, and the positive fund size adjustment factor.[28]

Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the Unemployment Compensation Trust Fund. The effect is an increase in the adjustment factors, which consequently increases tax rates for all contributory employers. Conversely, when unemployment is low, the adjustment factors decrease and tax rates for rated employers are reduced accordingly.

Unemployment Compensation Trust Fund

All unemployment compensation taxes are deposited into the Unemployment Compensation Trust Fund and are used for the sole purpose of paying benefits to eligible claimants.[29] The trust fund contains unemployment compensation taxes paid by employers, interest earned on money in the trust fund, property or securities acquired through money in the trust fund, earnings of the property or securities, and money credited to the state under s. 903 of the Social Security Act.[30] On December 31, 2000, the balance of the Unemployment Compensation Trust Fund was $1.95 billion. In calendar year 2000, the trust fund paid out $647.6 million in benefits and collected $398.3 million in unemployment compensation taxes. (*See* Table 2 below.)

[25] *Id*.; s. 443.131(3)(a), F.S.

[26] Section 443.131(3)(a), F.S.

[27] *See* s. 443.131(3)(e), F.S.

[28] Section 443.131(3)(e), F.S.

[29] Sections 443.191(3) & 443.201, F.S.

[30] Section 443.191(1), F.S.

(Table 2) Unemployment Compensation Trust Fund Balance (1996 to 2000)[31]			
Calendar Year	Taxes Collected	Benefits Paid	Trust Fund Balance (as of 12/31/Year)
1996	$ 607,805,803.35	$ 646,220,123.10	$ 1,890,961,875.30
1997	607,803,807.35	624,999,088.70	2,020,576,824.02
1998	463,691,972.84	640,177,737.53	1,984,087,701.99
1999	549,539,013.72	643,371,739.68	2,042,075,455.80
2000	398,303,000.72	647,572,149.25	1,946,184,677.72

Under current law, if the balance of the trust fund falls below 4 percent of the state's taxable payrolls for the year (the "trigger"), all contributory employers in the state are required to pay increased unemployment compensation taxes.[32] The increase is attributable to the charge of the positive fund size adjustment factor. Once the trust fund's balance falls below the 4-percent trigger, the adjustment factor remains in effect for subsequent years until the balance exceeds 4 percent of taxable payrolls.[33] Conversely, if the trust fund's balance exceeds 5 percent, a negative adjustment factor is used to reduce taxes until the balance falls below 5 percent.[34] The Agency for Workforce Innovation reports that a positive fund size adjustment factor has not been used in calculating employer tax rates since 1984.

Recent forecasts suggest that the Unemployment Compensation Trust Fund may fall below the 4-percent trigger in FY 2001-2002 (3.9 percent). These forecasts predict the trust fund would drop to 3.7 percent (FY 2002-2003), 3.4 percent (FY 2003-2004), and 3.3 percent (FY 2004-2005). However, once a positive fund size adjustment factor is charged, the trust fund's balance would increase until it exceeds 4 percent of taxable payrolls.

Monetary Eligibility Feasibility Study

In 1997, the Department of Labor and Employment Security conducted a study for the United States Department of Labor to determine the benefits to claimants and the impact on employers of using an alternative base period to calculate unemployment compensation.[35] The study estimates that implementing an alternative base period would result in monetary eligibility for an additional 4,000 claimants. At the time of the study, this number represented 8 percent of the ineligible claimants and 1 percent of the total number of claimants. The study further predicted that an alternative base period would impact 1.1 percent of the total number of liable employers. The study acknowledges that a major concern surrounding use of an alternative base period to

[31] Agency for Workforce Innovation, compiled from *Unemployment Insurance Transaction Summary (ETA 2112 report)* (Apr. 13, 2001).

[32] Section 443.131(3)(e)1.c., F.S.

[33] *Id.*

[34] *Id.*

[35] Division of Unemployment Compensation, Florida Dep't of Labor and Employment Security, *Monetary Eligibility Study: Variable Base Period Final Report* (June 1997).

determine monetary eligibility for unemployment compensation is obtaining and retrieving employer wage information for the most recent calendar quarter.

III. Effect of Proposed Changes:

For unemployment compensation claims commencing after January 1, 2002, the bill requires the Division of Unemployment Compensation within the Agency for Workforce Innovation to determine monetary eligibility for unemployment compensation using wages from an "alternative base period" (the last four completed calendar quarters) for those individuals who are ineligible to receive benefits under current law using wages from the "base period" (the first four of the last five completed calendar quarters). (*See* Table 3 below.)

Using the alternative base period, an individual's most recent quarter of work would count toward the two-quarter requirement and the $3,400 requirement. As a result, individuals could qualify for benefits having worked for the two quarters immediately preceding the filing of a claim, rather than the three quarters that is required under current law.

(Table 3) Based Period Chart with Overlay of Alternative Base Periods[36]

Year preceding prior year		**Prior year**				**Current year**			
July Aug. Sept.	Oct. Nov. Dec.	Jan. Feb. Mar.	Apr. May June	July Aug. Sept.	Oct. Nov. Dec.	Jan. Feb. Mar.	Apr. May June	July Aug. Sept.	Oct. Nov. Dec.
	BASE PERIOD				Lag quarter	Claim filed			
		ALTERNATIVE BASE PERIOD							
		BASE PERIOD				Lag quarter	Claim filed		
			ALTERNATIVE BASE PERIOD						
			BASE PERIOD				Lag quarter	Claim filed	
				ALTERNATIVE BASE PERIOD					
				BASE PERIOD				Lag quarter	Claim filed
					ALTERNATIVE BASE PERIOD				

The effect of the bill is illustrated by the following example: an employee is employed July 1, 2000, and was terminated through no fault of his or her own on December 23, 2000. The employee earned a total of $2,000 during the months of July, August, and September and a total of $2,000 during the months of October, November, and December. The employee filed a claim for unemployment compensation benefits on January 1, 2001:

- ***Under current law:*** **Not eligible for benefits –** The employee's base period would not be October 1, 1999, through September 30, 2000 (the first four of the last five completed

[36] Table 3 overlays the effect of the bill's proposed changes on the base period chart in Table 1. *See* Table 1, *supra* note 9.

calendar quarters). Since the employee neither worked for at least two quarters, nor earned at least $3,400 during the alternative base period, the employee would be ineligible for benefits.

- ***Under the bill:*** **Eligible for benefits –** The employee would use the "alternative base period" because the employee is not eligible for benefits under the current base period. The employee's alternative base period would be January 1, 2000, through December 31, 2000. Since the employee both worked for at least two quarters and earned at least $3,400 within the alternative base period, the employee would be eligible for benefits.

The bill also provides that wages used in a base period to establish monetary eligibility for unemployment compensation may not be used to establish eligibility on a subsequent claim.

If the necessary wage information is not available to the Division of Unemployment Compensation (division) through the quarterly wage and tax reports, the bill provides that the division will request the wage information from the employer. The bill requires employers to respond to the request within 10 days. However, it is noted that the bill does not authorize any penalties to be imposed on employers who fail or refuse to respond. Thus, it is unclear in such an instance whether the division would be expected to pay a claimant benefits based upon his or her statements regarding quarterly earnings or wait until the employer's quarterly wage and tax reports are received and processed.

The bill takes effect October 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Agency for Workforce Innovation (AWI) estimates that $2 million in additional unemployment compensation benefits would be paid from the Unemployment Compensation Trust Fund during FY 2001-2002. Beginning in FY 2002-2003, AWI estimates a recurring cost to the trust fund would be $4 million. The difference in cost between the first and second years of implementation is attributable to the bill's effective date of October 1, 2001.

For each employer whose workers qualify for benefits using the alternative base period, the employer's experience rate would likely increase and, consequently, the employer's tax rates would increase. In addition, it is uncertain whether the increase in benefits attributable to the alternative base period would cause the trust fund to fall below the 4-percent trigger. However, if the trust fund falls below the trigger as a result of the bill, each contributory employer would pay higher tax rates for the positive fund size adjustment factor.

B. Private Sector Impact:

Because the last completed quarter immediately before an individual files a claim for unemployment compensation would be included in determining monetary eligibility for benefits, some seasonal workers and other short-term members of the labor force may be able to establish eligibility for these benefits.

Employers would incur the costs associated with more frequent reporting of wage information submitted in addition to the existing quarterly wage and tax reports. As discussed above, the increased benefits attributable to the alternative based period would likely cause an increase in unemployment compensation taxes for some employers.

C. Government Sector Impact:

	FY 2001-2002 Trust Fund	**FY 2002-2003 Trust Fund**	**FY 2003-2004 Trust Fund**
Increased unemployment compensation benefits from use of alternative base period	($2,000,000)	($4,000,000)	($4,000,000)
Subtotal Unemployment Compensation Trust Fund	**($2,000,000)**	**($4,000,000)**	**($4,000,000)**
Agency for Workforce Innovation – information management center non-recurring outsourcing costs	($565,000)	-0-	-0-
Agency for Workforce Innovation – salaries and related expenses (10 FTEs)	($250,000)	($450,000)	($450,000)
Subtotal Employment Security Administration Trust Fund	**($815,000)**	**($450,000)**	**($450,000)**
Department of Revenue – non-recurring expenses and capital outlay	-0-	($9,122)	-0-
Department of Revenue – salaries and related expenses (2 FTEs)	-0-	($65,876)	($83,265)
Subtotal Grants and Donations Trust Fund	**-0-**	**($74,998)**	**($83,265)**
TOTAL	**($2,815,000)**	**($4,574,998)**	**($4,583,265)**

The Agency for Workforce Innovation (AWI) estimates that an additional 10 full-time equivalent (FTE) positions and $565,000 in non-recurring funds would be needed to update its information management systems and implement the bill. The annualized recurring cost of these salaries and related expenses would be $450,000. For the first year of implementation during FY 2001-2002, these costs are $250,000 due to the bill's effective date of October 1, 2001. The Department of Revenue also estimates that it would need an additional two FTEs to implement the bill beginning in FY 2002-2003 with an annualized recurring cost of these salaries and related expenses of $83,265.

VI. Technical Deficiencies:

The Agency for Workforce Innovation (AWI) recommends that the Legislature amend the bill on page 1, line 24, to include the words "first day of" before the words "the individual's benefit year." The current definition of the term "base period" specifies the "first four of the last five completed calendar quarters immediately preceding the *first day of* an individual's benefit year."[37] AWI's recommendation is designed to provide internal consistency in the definition and precisely identify when the alternative base period begins.

VII. Related Issues:

The bill allows application of the alternative base period for claims commencing *after* January 1, 2002, if an individual is not monetarily eligible for benefits based upon wages earned during the base period. The first day of a calendar quarter is frequently used as the filing date of claims and as a date to review claims for eligibility for unemployment compensation benefits. The Legislature may wish to amend the bill to specify that the alternative base period applies to claims commencing *on or* after January 1, 2002. The Agency for Workforce Innovation has also recommended this change.

VIII. Amendments:

#1 by Commerce & Economic Opportunities:
Requires the alternative base period to be applied to claims commencing *on* January 1, 2002, in addition to those claims commencing *after* that date, as provided in the original bill.

#2 by Commerce & Economic Opportunities:
Clarifies that the alternative base period consists of the first four of the last five completed calendar quarters immediately preceding the *first day of* an individual's benefit year.

[37] Section 443.036(7), F.S. (emphasis added).