

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1827 (PCB COM 03-01) Unemployment Compensation
SPONSOR(S): Commerce
TIED BILLS: **IDEN./SIM. BILLS:** SB 1448

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Commerce</u>	<u>16 Y, 0 N</u>	<u>Ken Winker</u>	<u>Paul Whitfield</u>
2) <u>Finance & Taxation</u>	<u>21 Y, 0 N</u>	<u>Overton</u>	<u>Diez-Arguelles</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill revises the Unemployment Compensation Law (ch. 443, F.S.) and other provisions of the Florida Statutes to conform to the transfer, under ch. 2000-165, L.O.F., of the Unemployment Compensation (UC) Program and of certain powers and duties of the former Division of Unemployment Compensation and the former Department of Labor and Employment Security to the Agency for Workforce Innovation. The bill conforms provisions governing the collection of unemployment taxes by the Department of Revenue under contract with the Agency for Workforce Innovation. The bill also corrects or updates erroneous, obsolete, and archaic provisions of the Unemployment Compensation Law and reorganizes the construction of ch. 443, F.S. The bill substantially implements the recommendations of 2002-2003 House/Senate interim study and the interim report by the former Senate Committee on Commerce and Economic Opportunity.

The bill clarifies that limited liability companies are "employing units" under the UC law. Requires claimants to submit a valid social security number in order to receive unemployment benefits, and requires claimants whose claims are denied to continue reporting to certify for benefits during any pending appeal. The bill also removes a requirement that persons who prepare and report quarterly wages and unemployment contributions and reimbursements must remit the amounts due by electronic means, requires that persons who prepare quarterly reports for 100 or more employers (rather than 5 or more employers under current law) must file the reports electronically, and revises the penalties imposed for failure to file a report by electronic means.

The bill substantially amends the following sections of the Florida Statutes: 45.031, 69.041, 120.80, 213.053, 216.292, 220.191, 222.15, 288.106, 288.107, 288.108, 440.15, 440.381, 443.011, 443.012, 443.031, 443.0315, 443.036, 443.041, 443.051, 443.061, 443.071, 443.091, 443.101, 443.111, 443.121, 443.131, 443.1315, 443.1316, 443.141, 443.151, 443.163, 443.171, 443.1715, 443.1716, 443.181, 443.191, 443.211, 443.221, 445.009, 468.529, and 896.101. The bill creates the following sections of the Florida Statutes: 443.1115, 443.1116, 443.1215, 443.1216, 443.1217, 443.1312, 443.1313, and 443.1317. The bill repeals the following sections of the Florida Statutes: 443.021, 443.161, 443.201, 443.231, and 443.232. The bill also repeals s. 6, ch. 94-347, L.O.F.

The bill provides that the act will take effect on October 1, 2003.

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

STORAGE NAME: h1827b.ft.doc
DATE: April 22, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

The bill revises the Unemployment Compensation Law (ch. 443, F.S.) and other provisions of the Florida Statutes to reflect the current agency framework for administration of the Unemployment Compensation (UC) Program, in which the program is administered by the Agency for Workforce Innovation (AWI) and the Unemployment Appeals Commission, and unemployment tax collection services are provided by the Department of Revenue (DOR) under contract with AWI. The bill clarifies which functions are unemployment tax collection services by assigning duties throughout ch. 443, F.S., to the “tax collection service provider,” which the bill designates as DOR.

The bill provides technical changes to reflect current bill drafting practices and methods, revising the text of the UC law to reflect current grammar and usage of the English language, and correcting or updating erroneous, obsolete, and archaic provisions. The bill deletes obsolete historical references and replaces nonspecific cross-references (e.g., “herein,” “hereto,” “hereof,” “hereunder,” and “hereinabove”) with specific cross-references to discrete subdivisions of the Florida Statutes. The bill also replaces inconsistent terms (e.g., “employment record,” “experience-rating record,” and “employer’s account”) with uniform terms.

The bill updates provisions of the UC law which have become obsolete due to advancements in information technology, thereby reflecting current procedures and practices used to administer the program. The bill also provides conforming changes to recognize the role of the state’s workforce system, including the one-stop career centers operated by the regional workforce boards under the direction of Workforce Florida, Inc., and AWI.

The bill substantially implements the recommendations arising from the joint House-Senate Interim Project and the interim project report prepared by the former Senate Committee on Commerce and Economic Opportunities [*Administration of the Unemployment Compensation Program*, Interim Project Report 2003-113, January 2003].

Florida’s Unemployment Compensation Program

Florida’s Unemployment Compensation (UC) Program was created by the Legislature in 1937 as part of the national unemployment insurance (UI) system. The national UI system was established as a direct result of the high unemployment experienced during the Great Depression of the 1930s. The UI system is a federal-state program, authorized by both the Social Security Act of 1935 and the Wagner-Peyser Act. The Federal Unemployment Tax Act of 1939 (FUTA) later amended the program and governs it today. The UI system’s primary objectives are to give workers temporary and partial insurance against income loss resulting from unemployment and to assist the countercyclical

stabilization of the economy during recessions by maintaining workers' purchasing power. Florida's first unemployment benefits were paid to eligible workers in 1939.

Transfer of the Unemployment Compensation Program to the Agency for Workforce Innovation

The Workforce Innovation Act of 2000 [Chapter 2000-165, L.O.F.] transferred administration of the state's UC program from the Division of Unemployment Compensation of the former Department of Labor and Employment Security to a new state agency created by the act — the Agency for Workforce Innovation (AWI). The transfer was enacted as a one-paragraph provision, which transferred the UC program effective October 1, 2000, by a type-two transfer. The legislation did not, however, replace the corresponding references throughout the Florida Statutes from the Division of Unemployment Compensation to AWI.

Included within this one-paragraph provision, the 2000 legislation required AWI to enter into a contract with the Department of Revenue (DOR) by January 1, 2001, under which DOR would provide "unemployment tax collection services." The legislation, however, did not specify which functions of the UC program were considered tax collection services.

Before its transfer to AWI, the Division of Unemployment Compensation was composed of three bureaus: a Bureau of Tax, a Bureau of Claims Administration, and a Bureau of Appeals. The Bureau of Tax was responsible for determining employer liability for unemployment taxes, collecting taxes and wage reports, and auditing employer wage records. The Bureau of Claims Administration oversaw the processing of claims for unemployment benefits, paid benefits to qualified claimants, issued determinations of claims involving questions of eligibility for benefits, and detected fraudulent claims. The Bureau of Appeals was responsible for conducting administrative hearings of appeals from determinations of claims for benefits and appeals from determinations of employer tax liability.

Unemployment Tax Collection Services Provided by the Department of Revenue

The Agency for Workforce Innovation and the Department of Revenue began negotiations on the initial contract for unemployment tax collection services after the Governor approved the Workforce Innovation Act in May 2000. Although the legislation required the agencies to enter into the initial contract by January 1, 2001, AWI and DOR accelerated the implementation and approved the first annual contract beginning October 1, 2000. Because the legislation did not specify which functions of the former Division of Unemployment Compensation were "unemployment tax collection services," the contract necessarily had to enumerate the functions to be performed by DOR. In consultation with the Governor's office, the agencies agreed that DOR's tax collection services would roughly encompass the duties previously performed by the Bureau of Tax of the former Division of Unemployment Compensation.

The initial contract specified that the unemployment tax collection services performed by DOR included: registering employers, processing and data entry of employer tax and wage reports, determining employer tax liability, annually determining and assigning employer tax rates, performing tax collection and enforcement activities, and maintaining employer accounts. Although the department makes the initial determination of employer tax liability, the contract allowed an employer to appeal a determination to AWI for final agency action. The initial contract also required DOR to conduct certain investigations, including investigation of claimant wages, and to perform audits of employer accounts. The terms of the 2000-2001 contract specifying which unemployment tax collection services were initially assigned to DOR remained substantially unchanged in the subsequent 2001-2002 and 2002-2003 contracts.

The Department of Revenue has not created a separate office within the department to collect unemployment taxes, but has integrated these services within the administrative structure of the General Tax Administration (GTA) Program. The GTA program comprises other tax functions, including responsibility for collecting the corporate income tax, the sales and use tax, the communications services tax, and the fuel tax.

Dissolution of the Department of Labor and Employment Security

During the 2002 Regular Session, the Legislature abolished the Department of Labor and Employment Security and transferred the department's remaining divisions, functions, and responsibilities to other executive branch agencies [Chapter 2002-194, L.O.F.]. In addition, the legislation clarified that AWI is the designated agency for administering federal grants and other funds of the UC program [Section 20-50(3)(j), F.S.]. The legislation also specified that AWI's Office of Workforce Services is responsible for administering the UC program [Section 20-50(2)(a), F.S.]. Despite these clarifications, obsolete references to the former Division of Unemployment Compensation and the former Department of Labor and Employment Security remain throughout the state's UC law (ch. 443, F.S.).

Interim Project Report

During the 2002-2003 interim, both the Senate and the House of Representatives assigned parallel interim projects concerning the UC law. The objective of the Senate interim project was to review the UC law, as well as any related statutes, in order to ensure that the statutory provisions reflect the current agency framework for administration of the UC program and to identify obsolete or erroneous provisions. Similarly, the objective of the House interim project was to update, remove anachronistic language, and generally "clean up" the UC law. To simultaneously achieve the objectives of both interim projects, committee staff of the former Senate Committee on Commerce and Economic Opportunities worked cooperatively with staff of the former House Committee on Workforce and Technical Skills.

An informal workgroup was organized to examine each provision of the UC law, as well as other statutes affecting the UC program. The workgroup was composed of staff from the Agency for Workforce Innovation, the Department of Revenue, the Unemployment Appeals Commission, and legislative staff. To identify the statutory changes needed to conform the UC law to the current agency framework, and to update archaic provisions, committee staff prepared draft revisions to the UC law. Although the workgroup did not issue formal recommendations, the workgroup examined these draft revisions in order for committee staff to draw upon the combined expertise of the workgroup's membership and to provide committee staff with technical assistance in reviewing the UC law. In addition, committee staff consistently furnished recognized organizations in the business community with notices of the workgroup's meetings, together with copies of the draft revisions, to maximize public input.

Following the meetings of the workgroup, staff of the Senate Committee on Commerce, Economic Opportunities, and Consumer Services published an interim project report [*Administration of the Unemployment Compensation Program*, Interim Project Report 2003-113, January 2003] issuing its findings and recommendations concerning the UC program.

The interim report found the UC law has not been revised to reflect the transfer of the UC program from the former Department of Labor and Employment Security to AWI. In addition, the report found the UC law contains erroneous, obsolete, and archaic provisions, leading to the gradual deterioration of the law's text. The report also found the UC law does not specify which functions of the UC program are "unemployment tax collection services" to be provided by DOR under contract with AWI and found administrative challenges to DOR providing these tax collection services, including the department's lack of rulemaking authority and uncertain authority to enforce AWI's rules administering the UC program.

The report recommends the UC law be revised to reflect the current organization of the state for administration of the UC program. As part of this revision, the report recommends the erroneous, obsolete, and archaic provisions of the law be corrected or updated. The report also recommends the UC law be revised to clarify which functions of the UC program are unemployment tax collection services and recommends that DOR's administrative challenges be addressed to guarantee the enduring performance of the tax collection functions of the UC program.

C. SECTION DIRECTORY:

Section 1 amends s. 45.031, F.S. (*Judicial sales procedure*). The bill provides conforming changes, including the addition of a cross-reference to s. 443.1316, F.S., clarifying the Department of Revenue is the state agency providing unemployment tax collection services under contract with the Agency for Workforce Innovation. (See section 36 of the bill.)

Section 2 amends s. 69.041, F.S. (*State named party; lien foreclosure, suit to quiet title*). The bill provides conforming changes, including the addition of a cross-reference to s. 443.1316, F.S., clarifying the Department of Revenue is the state agency providing unemployment tax collection services under contract with the Agency for Workforce Innovation. (See section 36 of the bill.)

Section 3 amends s. 120.80, F.S. (*Exceptions and special requirements; agencies*). The bill provides conforming changes relating to the dissolution of the former Department of Labor and Employment Security; transfers an exemption in the Administrative Procedure Act (ch. 120, F.S.) which relates to judges of compensation claims under the Workers' Compensation Law (ch. 440, F.S.) from subsection (10), relating to the former department, to subsection (1), relating to the Division of Administrative Hearings (DOAH); and conforms these exemptions to the transfer of the UC program from the former department to the Agency for Workforce Innovation. The bill clarifies an existing exemption from s. 120.57(1)(a), F.S., by specifying that unemployment hearings under ch. 443, F.S., are not conducted by administrative law judges assigned by DOAH, but are conducted by the Unemployment Appeals Commission, appeals referees, and AWI or its special deputies. The bill also clarifies the uniform rules of procedure adopted by the Administration Commission under s. 120.54(5), F.S., do not apply to appeal proceedings conducted by the Unemployment Appeals Commission or the appeals referees.

Section 4 amends s. 213.053, F.S. (*Confidentiality and information sharing*). The bill provides conforming changes, including the addition of a cross-reference to s. 443.1316, F.S., clarifying the Department of Revenue is the state agency providing unemployment tax collection services under contract with the Agency for Workforce Innovation. (See section 36 of the bill.)

Section 5 amends s. 216.292, F.S. (*Appropriations nontransferable; exceptions*). The bill clarifies that the state agency providing unemployment tax collection services is responsible for certifying if a state agency or the judicial branch is delinquent on reimbursements due to the Unemployment Compensation Trust Fund. The bill also includes the addition of a cross-reference to s. 443.1316, F.S., clarifying the Department of Revenue is the state agency providing unemployment tax collection services under contract with the Agency for Workforce Innovation. (See section 36 of the bill.)

Section 6 amends s. 220.191, F.S. (*Capital investment tax credit*). The bill clarifies that the definition of the term "jobs" for purposes of the capital investment tax credit must be consistent with terms used by the Agency for Workforce Innovation, rather than by the former Department of Labor and Employment Security, for purposes of unemployment tax administration.

Section 7 amends s. 222.15, F.S. (*Wages or unemployment compensation payments due deceased employee may be paid spouse or certain relatives*). The bill clarifies that the Agency for Workforce Innovation, rather than the former Division of Unemployment Compensation, may pay unemployment benefits to a spouse or certain surviving relatives if a claimant dies.

Section 8 amends s. 288.106, F.S. (*Tax refund program for qualified target industry businesses*). The bill clarifies definitions of the terms "business" and "jobs" for purposes of the qualified target industry business tax refund program by reflecting the state agency providing unemployment tax collection services is responsible for registering employing units and by specifying the term "jobs" must be consistent with terms used by the Agency for Workforce Innovation, rather than by the former Department of Labor and Employment Security, for purposes of unemployment tax administration. The

bill also includes the addition of a cross-reference to s. 443.1316, F.S., clarifying the Department of Revenue is the state agency providing unemployment tax collection services under contract with AWI. (See section 36 of the bill.)

Section 9 amends s. 288.107, F.S. (*Brownfield redevelopment bonus refunds*). The bill clarifies that the definition of the term “jobs” for purposes of brownfield redevelopment bonus refunds must be consistent with terms used by the Agency for Workforce Innovation, rather than by the former Department of Labor and Employment Security (DLES), for purposes of unemployment tax administration. The bill also clarifies that AWI, rather than the former DLES, may verify employment and wage data submitted in claims for tax credits and participate in monitoring and auditing applications made under the program.

Section 10 amends s. 288.108, F.S. (*High-impact business*). The bill clarifies that the definition of the term “jobs” for purposes of high-impact business performance grants must be consistent with terms used by the Agency for Workforce Innovation, rather than by the former Department of Labor and Employment Security, for purposes of unemployment tax administration.

Section 11 amends s. 440.15, F.S. (*Compensation for disability*). The bill clarifies an employee seeking disability benefits under the Workers’ Compensation Law may be required to authorize the Agency for Workforce Innovation, rather than the former Department of Labor and Employment Security, to release unemployment compensation information relating to the employee.

Section 12 amends s. 440.381, F.S. (*Application for coverage; reporting payroll; payroll audit procedures; penalties*). The bill clarifies that employers under the Workers’ Compensation Law must submit quarterly earning reports required under the UC law and the rules of the Agency for Workforce Innovation and of the state agency providing unemployment tax collection services, rather than of the former Division of Unemployment Compensation. The bill also includes the addition of a cross-reference to s. 443.1316, F.S., clarifying the Department of Revenue is the state agency providing unemployment tax collection services under contract with AWI. (See section 36 of the bill.)

Unemployment Compensation Law (ch. 443, F.S.)

Section 13 amends s. 443.011, F.S. (*Short title*). The bill provides technical changes to reflect current bill drafting practices and methods.

Section 14 amends s. 443.012, F.S. (*Unemployment Appeals Commission*). The bill deletes historical provisions relating to the initial staggered terms for members of the Unemployment Appeals Commission, which began on July 1, 1977. The bill also provides other technical changes to reflect current bill drafting practices and methods.

Section 15 amends s. 443.031, F.S. (*Rule of liberal construction*). Under current law, the UC law must be liberally construed to implement the public policy and legislative intent described in ss. 443.021 and 443.031, F.S. The courts have interpreted this public policy and legislative intent as requiring the UC law to be construed liberally in favor of a claimant of unemployment benefits [for example, see *Foote v. Unemployment Appeals Commission*, 659 So. 2d 1232,1233 (Fla. 5th DCA 1995) and *Underhill v. Publix Super Markets*, 610 So. 2d 48 (Fla. 3d DCA 1992)] who is unemployed through no fault of his or her own. The bill deletes this description of public policy and legislative intent and replaces this language with a requirement that the UC law be liberally construed in favor of a claimant of unemployment benefits who is unemployed through no fault of his or her own. (See *also* section 52 of the bill which repeals s. 443.021, F.S.) Current law also requires that any doubt as to the proper construction of the UC law be resolved in favor of federal requirements, including the Wagner-Peyser Act. The bill clarifies that any doubt as to the proper construction of the UC law is resolved in favor of conformity with federal law, including the Federal Unemployment Tax Act, the Social Security Act, the Wagner-Peyser Act, and the Workforce Investment Act.

Section 16 amends s. 443.0315, F.S. (*Effect of finding, judgment, conclusion, or order in separate or subsequent action or proceeding; use as evidence*). The bill provides technical changes to reflect current bill drafting practices and methods.

Section 17 amends s. 443.036, F.S. (*Definitions*). The bill reorganizes the definitions for the UC law, reordering the defined terms in alphabetical order. The bill deletes a provision specifying that definitions only have their prescribed meaning unless the context clearly requires otherwise, avoiding the implication that the UC law does not rely on its defined terms. The bill deletes substantive provisions from three defined terms, which are created as new sections:

- “Employer” in s. 443.1215, F.S. (See section 29 of the bill.)
- “Employment” in s. 443.1216, F.S. (See section 30 of the bill.)
- “Wages” in s. 443.1217, F.S. (See section 31 of the bill.)

The bill provides conforming changes relating to the transfer of the former Division of Unemployment Compensation from the former Department of Labor and Employment Security to the Agency for Workforce Innovation and deletes the corresponding definition of the term “division.” The bill replaces an ambiguous provision declaring that the term “institutions of higher education,” as used in the UC law, includes all colleges and universities recognized by the state with a more precise provision specifying that the term includes each community college, state university, and other institutions authorized under s. 1005.03, F.S., to use the designation “college” or “university.” The bill also replaces the term “reimbursable employer” with “reimbursing employer,” which reflects the type of employer who must repay the Unemployment Compensation Trust Fund for benefits paid in lieu of paying payroll taxes. The bill also defines five new terms:

- “Contributing employer” defines the type of employer who must pay payroll taxes to finance unemployment benefits.
- “One-stop career center” reflects that the one-stop delivery system operated by Workforce Florida, Inc., AWI, and the regional workforce boards has replaced the former employment offices. (See sections 44 and 48 of the bill.)
- “Public employer” establishes a uniform definition for the type of employers who are reimbursing employers unless they elect to become contributing employers. These employers include state agencies, political subdivisions, and certain government instrumentalities. (See section 34 of the bill.)
- “Reimbursement” defines the type of payment to the Unemployment Compensation Trust Fund to finance unemployment benefits from employers who repay the trust fund for benefits paid in lieu of paying payroll taxes.
- “Tax collection service provider” defines the state agency providing unemployment tax collection services. The term also includes the addition of a cross-reference to s. 443.1316, F.S., clarifying the Department of Revenue is the state agency providing unemployment tax collection services under contract with AWI. (See section 36 of the bill.)

Section 18 amends s. 443.036, F.S., (Definitions), as amended by this act, effective January 1, 2004. The bill clarifies that limited liability companies are “employing units” under the UC law, thereby permitting their employees to receive unemployment benefits and requiring the companies to be liable for payment of contributions to finance those benefits,

Section 19 amends s. 443.041, F.S. (*Waiver of rights; fees; privileged communications*). The bill clarifies that the existing prohibition against an employer requiring an employee to pay any part of the employer’s required contributions (payroll taxes) also applies to reimbursements, penalties, interest, fees, or fines. The bill clarifies that the maximum amount of attorney’s fees that may be awarded in appeals of unemployment claims in the district courts of appeal or the Florida Supreme Court is 50 percent of the total amount of regular unemployment benefits that may be awarded to an individual

during a benefit year. The bill makes changes to two criminal penalties relating to the representation of unemployment claimants:

- Under current law, a person, firm, or corporation is prohibited from receiving remuneration for services rendered on behalf of an unemployment claimant beyond the remuneration authorized by law, which the law classifies as a criminal misdemeanor. However, the law does not specify which degree of misdemeanor or corresponding penalties apply. The bill establishes this offense as a misdemeanor of the second degree, which is punishable by no more than 60 days in jail and a \$500 fine.
- Under current law, a person, firm, or corporation is prohibited from soliciting business to appear on behalf of unemployment claimants, which the law classifies as a misdemeanor of the second degree punishable by no more than 60 days in jail and a \$500 fine. During the committee interim project (see page 4 of this staff analysis), workgroup members asserted this offense is not enforced and acknowledged the potential for challenge under the state or federal constitutions if the offense were enforced. The bill deletes this offense.

Section 20 amends s. 443.051, F.S. (*Benefits not alienable; exceptions, child support intercept*). The bill deletes the definition of the term “state or local child support enforcement agency” and replaces corresponding references to this term with references to the Department of Revenue, reflecting that DOR is the state agency responsible for child support enforcement. The bill updates provisions relating to the intercept of unemployment benefits for child support obligations owed by unemployment claimants, reflecting that, under current procedures and practices, DOR provides the Agency for Workforce Innovation with a magnetic tape containing electronic data files to identify unemployment claimants who owe child support obligations.

Section 21 amends s. 443.061, F.S. (*Vested rights not created*). The bill substantially rewords the “saving clause” of the UC law. Under current law, this provision reserves the Legislature’s right to amend or repeal any part of the UC law at any time without allowing vested private rights to be created and consequently prevent the application of the amendment or repeal. Under current bill drafting practices and methods, a saving clause is used to continue in operation some function of a law which would otherwise be abrogated by the passage of an act. Conversely, s. 443.061, F.S., prevents vested rights from being created in a law which limits the effect of an act amending or repealing the law. The bill clarifies that a right granted under the UC law is subject to amendment or repeal and does not create a vested right.

Section 22 amends s. 443.071, F.S. (*Penalties*). Under current law, a person who willfully violates any provision of the UC law, or any order or rule issued under that law, for which there is no other penalty prescribed commits a misdemeanor of the second degree punishable by no more than 60 days in jail and a \$500 fine. During the committee interim project (see page 4 of this staff analysis), workgroup members asserted this offense is not enforced and acknowledged the potential for challenge under the state or federal constitutions if the offense were enforced. The bill deletes this offense. The bill also provides technical changes to reflect current bill drafting practices and methods and provides other conforming changes.

Section 23 amends s. 443.091, F.S. (*Benefit eligibility conditions*). The bill requires claimants of unemployment benefits to submit a valid social security number to the Agency for Workforce Innovation in order to receive unemployment benefits, authorizes AWI to verify social security numbers with the U.S. Social Security Administration, and permits the denial of benefits if a claimant’s social security number is invalid, is not assigned to the claimant, or cannot be verified. The bill prohibits AWI from adopting rules conflicting with a requirement established by the bill that a claimant must continue reporting to AWI to certify for benefits during a pending appeal. (See section 25 of the bill). The bill deletes a historical provision specifying that an amendment by ch. 96-378, L.O.F., applies to benefit years beginning on or after July 1, 1996 (required an eligible claimant to be paid wages of at least \$3,400 and 1.5 times the wages paid in the high quarter). The bill also deletes historical provisions

specifying that the calculation of wages for insured work included wages for previously uncovered services with respect to weeks of unemployment beginning on or after January 1, 1978.

Section 24 amends s. 443.101, F.S. (*Disqualification for benefits*). The bill deletes a historical provision specifying that the disqualification from unemployment benefits for individuals receiving retirement, pension, or annuity benefits under the Social Security Act applies only to weeks of unemployment beginning on or after July 5, 1992. The bill also deletes specific references to “hearing examiners or appeals referees” who process unemployment claims and replaces them with general references to the Agency for Workforce Innovation.

Section 25 amends s. 443.111, F.S. (*Payment of benefits*). The bill allows payment of unemployment benefits electronically in addition to payment by mail and deletes authority for payment of benefits through claims offices. The bill deletes several historical references for provisions that took effect in 1992, 1996, and 2000. The bill deletes provisions relating to extended benefits and the short-time compensation program, which are created as new sections:

- Extended benefits in s. 443.1115, F.S. (See section 26 of the bill.)
- Short-time compensation program in s. 443.1116, F.S. (See section 27 of the bill.)

Section 26 creates s. 443.1115, F.S. (*Extended benefits*). The bill creates provisions for the payment of extended benefits by the state (which is different than temporary extended unemployment compensation authorized by the United States Congress). These provisions are substantially similar to s. 443.111(6), F.S., which the bill deletes. (See section 25 of the bill.) The bill deletes a provision in current law which required the Division of Unemployment Compensation to make an appropriate public announcement when an extended benefit period became effective or was terminated. The bill also deletes a provision relating to the definitions for extended benefits, specifying that terms only have their prescribed meaning unless the context clearly requires otherwise.

Section 27 creates s. 443.1116, F.S. (*Short-time compensation*). The bill creates provisions for the short-time compensation program. These provisions are substantially similar to s. 443.111(7), F.S., which the bill deletes. (See section 25 of the bill.) The bill specifies that the director of the Agency for Workforce Innovation or his or her designee, rather than the director of the former Division of Unemployment Compensation, must approve short-time compensation plans.

Section 28 amends s. 443.121, F.S. (*Employing units affected*). The bill provides conforming changes relating to the election of state agencies, political subdivisions, and certain government instrumentalities to provide their employees with elective unemployment coverage for employment that is not otherwise covered. The bill deletes specific references to state agencies, political subdivisions, and certain government instrumentalities and replaces these references with the uniform term “public employer,” the definition of which is created in s. 443.036(35), F.S. (See section 17 of the bill.)

Section 29 creates s. 443.1215, F.S. (*Employers*). The bill creates substantive provisions describing which employing units are employers subject to the UC law. These provisions are substantially similar to the definition of term “employer,” which the bill deletes from s. 443.036(19), F.S. (See section 17 of the bill.) The bill deletes a historical provision limiting an exemption for agricultural labor to employment after December 31, 1977.

Section 30 creates s. 443.1216, F.S. (*Employment*). The bill creates substantive provisions describing which services are employment that is subject to the UC law. These provisions are substantially similar to the definition of the term “employment,” which the bill deletes from s. 443.036(21), F.S. (See section 17 of the bill.) The bill clarifies that positions in the Senior Management System created under s. 110.402, F.S., are among the major nontenured policymaking or advisory positions exempt from the UC law, which is consistent with current law [*Gray v. Fla. Unemployment Appeals Commission*, 541 So. 2d

1319, 1320 (Fla. 1st DCA 1989)]. The bill also deletes historical provisions that took effect in 1978 and 1997.

Section 31 creates s. 443.1217, F.S. (*Wages*). The bill creates substantive provisions describing which wages are subject to the UC law. These provisions are substantially similar to the definition of the term “wages,” which the bill deletes from s. 443.036(40), F.S. (See section 17 of the bill.) The bill also deletes historical provisions that took effect in 1983 and 1986.

Section 32 amends s. 443.131, F.S. (*Contributions*). The UC law includes a provision that would automatically increase employer contribution (payroll tax) rates if the Federal Government ceased to provide the state with administrative resource grants from the federal unemployment tax, which currently fund the administrative costs of the UC program. This provision would set the standard contribution rate at 3.0 percent and increase by 0.3 percent each employer’s contribution rate that is varied based on benefit experience. Historically, the standard rate of contributions was 2.7 percent. Thus, historically, the automatic increase would have been the same for all employers. However, the standard rate was subsequently increased to 5.4 percent without a corresponding change to this provision. Consequently, if this automatic provision were to take effect, the contribution rates for employers paying the standard rate would be reduced by 2.4 percent (reduction from 5.4 to 3.0 percent) and the rates for employers with earned contribution rates varied based on benefit experience would be increased by 0.3 percent.

The bill deletes these automatic contribution rate increases, reflecting that the Legislature would necessarily address unemployment contribution rates if the Federal Government restructures the federal unemployment tax or significantly curtails the availability of the administrative resource grants that fund UC program administration. The bill deletes provisions relating to the financing of benefits paid to employees of nonprofit organizations, the financing of benefits paid to employees of the state and political subdivisions, and the Public Employers Unemployment Compensation Benefit Account, which are created as new sections:

- Financing benefits paid to employees of nonprofit organizations in s. 443.1312, F.S. (See section 33 of the bill.)
- Financing benefits paid to employees of the state and political subdivisions and the Public Employers Unemployment Compensation Account in s. 443.1313, F.S. (See section 34 of the bill.)

Current law prevents employers from being charged for benefits paid to employees who are discharged for unsatisfactory performance during an initial employment probationary period. When this provision was enacted, it included an automatic repeal provision that would have taken effect if the Federal Government had objected to the provision. The bill deletes the automatic repeal provision. The bill replaces inconsistent references to the terms “employment record,” “account,” and “experience-rating account” with the uniform term “employment record.” The bill also relocates the definition of the term “annual payroll.”

Section 33 creates s. 443.1312, F.S. (*Reimbursements; nonprofit organizations*). The bill creates substantive provisions governing the reimbursement of the Unemployment Compensation Trust Fund for benefits paid to employees of nonprofit organizations. These provisions are substantially similar to s. 443.131(4), F.S., which the bill deletes. (See section 32 of the bill.) The bill clarifies that nonprofit organizations must reimburse the trust fund for the short-time compensation benefits paid to their employees.

Section 34 creates s. 443.1313, F.S. (*Public employers; reimbursements; election to pay contributions*). The bill creates substantive provisions governing the reimbursement of the Unemployment Compensation Trust Fund for benefits paid to employees of public employers and the option for public employers to become contributing employers. These provisions are substantially

similar to s. 443.131(5) and (6), F.S., which the bill deletes. (See section 32 of the bill.) The bill deletes specific references to state agencies, political subdivisions, and certain government instrumentalities and replaces these references with the uniform term “public employer,” the definition of which is created in s. 443.036, F.S. (See section 17 of the bill.) The bill clarifies that the benefits charged to the Public Employers Unemployment Compensation Benefit Account include only those benefits paid to employees of public employers who elect to become contributing employers. The bill also deletes a historical provision relating to the recovery of delinquent reimbursements from public employers which took effect on October 1, 1979.

Section 35 amends s. 443.1315, F.S. (*Treatment of Indian tribes*). The bill provides technical changes to reflect current bill drafting practices and methods. The bill also provides other conforming changes.

Section 36 amends s. 443.1316, F.S. (*Unemployment tax collection services; interagency agreement*). The bill clarifies the requirements for the interagency agreement between the Agency for Workforce Innovation and the Department of Revenue, under which DOR is contracted to provide unemployment tax collection services for the UC program. Under current law, AWI and DOR negotiate in the interagency agreement which program functions are unemployment tax collection services. The bill assigns duties throughout the UC law to the “tax collection service provider” (i.e., DOR), eliminating the need to detail the assignment of many duties in the interagency agreement. The bill limits DOR’s unemployment duties to implementing those provisions of the UC law conferring duties on the tax collection service provider and those provisions conferring duties on AWI which are specifically delegated to DOR in the interagency agreement. The bill authorizes DOR to charge AWI up to 10 percent of the interagency for overhead or indirect costs, notwithstanding a current law that limits the payment of overhead and indirect costs in interagency contracts to 5 percent of the contract amount (s. 216.346, F.S.). The bill also deletes historical provisions enacted in ch. 2000-165, L.O.F., which required DOR to determine, in consultation with the former Department of Labor and Employment Security, the number of unemployment tax collection service positions to be transferred from the former DLES to DOR and which required the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a feasibility study regarding privatization of unemployment tax collection services [see OPPAGA, *Federal Law Restricts the Outsourcing of Many Unemployment Compensation Tax Collection Services*, Report No. 03-05 (January 2003)].

Section 37 creates s. 443.1317, F.S. (*Rulemaking authority; enforcement of rules*). The bill replaces the rulemaking authority in current law (s. 443.171(2), F.S.) assigned to the former Division of Unemployment Compensation, which the bill deletes. (See section 41 of the bill.) The bill creates a new section prescribing rulemaking powers for the Agency for Workforce Innovation and the Department of Revenue to implement the UC law. The bill specifies that AWI has ultimate authority over administration of the UC program, except for those powers assigned to the Unemployment Appeals Commission. The bill authorizes AWI to adopt rules administering any duty assigned under the UC law to either AWI or DOR. The bill authorizes DOR to adopt rules, subject to approval by AWI, administering those provisions of the UC law conferring duties on the tax collection service provider and those provisions conferring duties on AWI which are specifically delegated to DOR in the interagency agreement. The bill prohibits DOR’s rules from conflicting with AWI’s rules or with the interagency agreement. The bill also authorizes AWI and DOR to enforce rules adopted by either agency for administering the UC law.

Section 38 amends s. 443.141, F.S. (*Collection of contributions and reimbursements*). The bill provides technical changes to reflect current bill drafting practices and methods. The bill also provides other conforming changes.

Section 39 amends s. 443.151, F.S. (*Procedure concerning claims*). The bill clarifies that notices of determinations or redeterminations of unemployment claims, which must be provided to the claimant and to each applicable employer, relate only to monetary and nonmonetary determinations and redeterminations. The bill clarifies that only adversely affected parties are entitled to appeal a determination or decision to an appeals referee or to the Unemployment Appeals Commission, and the bill eliminates a requirement that appeals referees must have the qualifications established by the

Department of Management Services. The bill clarifies that claimants of unemployment benefits have the right to be represented by counsel or an authorized representative at his or her own expense, but that the authorized representative need not be a qualified representative. The bill also replaces inconsistent references to the term "account" with the uniform term "employment record" and replaces specific references to "examiners" who process unemployment claims with general references to the Agency for Workforce Innovation. The bill deletes a historical provision requiring AWI to provide claimants with certain required disclosures at the time of filing a new claim after December 31, 1996.

Section 40 amends s. 443.163, F.S. (*Electronic reporting and remitting of contributions and reimbursements*). The bill provides conforming changes, clarifying that the taxes which must be submitted to the Department of Revenue by electronic means include contributions from employers paying payroll taxes and reimbursements from nonprofit organizations and public employers. The bill removes requirements, enacted during the 2002 Regular Session (s. 52, ch. 2002-218, L.O.F.), which oblige persons who prepare and report quarterly wages and unemployment contributions and reimbursements for 5 or more employers (e.g., certified public accountants) to submit the report and remit unemployment contributions or reimbursements due electronically and which impose a penalty of 10 percent of the amount due, or \$10 per report, whichever is greater. In lieu of these requirements, the bill obliges a person who prepared and reported quarterly reports for 100 or more employers in a calendar year during the preceding state fiscal year to file subsequent reports by electronic means approved by the department but it does not require a person who prepares reports to remit the contributions or reimbursements due by electronic means on behalf of the employers. The bill also specifies that the penalty for filing a report by a means other than electronic means is \$10 per report and eliminates the calculation of the penalty based on 10 percent of the amount due. The amendments made to this section apply retroactively to reports due on or after April 1, 2003. (See s. 53 of the bill.)

Section 41 amends s. 443.171, F.S. (*Agency for Workforce Innovation and commission; powers and duties; records and reports; proceedings; state-federal cooperation*). The bill replaces a requirement that the Agency for Workforce Innovation submit an annual report to the Governor on the UC program with a requirement that AWI annually submit program information to Workforce Florida, Inc., for inclusion in WFI's strategic plan. The bill deletes the rulemaking authority of the former Division of Unemployment Compensation, which is replaced by new rulemaking authority for AWI in s. 443.1317, F.S. (See section 37 of the bill.) The bill deletes a requirement that the former Division of Unemployment Compensation have an official seal which must be judicially noticed. The bill allows AWI to distribute certain documents to the public on the Internet or similar electronic means in lieu of publishing printed documents. The bill deletes provisions establishing the Unemployment Compensation Advisory Council, which AWI asserts does not exist and has not been convened since 1998, approximately 2 years before the UC program was transferred to AWI. The bill also deletes a specific list of agencies for which AWI provides confidential unemployment information, but retains authority for AWI to provide this information to public employees in the performance of their public duties.

Section 42 amends s. 443.1715, F.S. (*Disclosure of information; confidentiality*). The bill deletes a specific list of agencies for which the Agency for Workforce Innovation provides confidential unemployment information, but retains authority for AWI to provide this information to public employees in the performance of their public duties.

Section 43 amends s. 443.1716, F.S. (*Authorized electronic access to employer information*). The bill reorganizes this section to relocate definitions of the terms "consumer-reporting agency" and "creditor" from subsections (5) and (10) to subsection (1).

Section 44 amends s. 443.181, F.S. (*Public Employment Service*). The bill provides conforming changes, clarifying the one-stop delivery system operated by the Agency for Workforce Innovation under policy direction of Workforce Florida, Inc., rather than the public employment offices operated by the former Department of Labor and Employment Security, constitutes this state's public employment service as part of the national system of public employment offices under federal law.

Section 45 amends s. 443.191, F.S. (*Unemployment Compensation Trust Fund; establishment and control*). The bill specifies that the Unemployment Compensation Trust Fund is the sole and exclusive source for the payment of unemployment benefits and declares that the state is not liable for funds beyond amounts received from the Federal Government. These provisions are substantially similar to s. 443.201(1), F.S., which the bill repeals. (See section 52 of the bill.)

Section 46 amends s. 443.211, F.S. (*Employment Security Administration Trust Fund; appropriation; reimbursement*). The bill deletes a historical provision that exempts the Special Employment Security Administration Trust Fund from laws enacted by the Legislature of 1949, specifically including a continuing appropriations law enacted that year. The bill deletes another historical provision relating to obligations of the state for federal funds received before July 1, 1941.

Section 47 amends s. 443.221, F.S. (*Reciprocal arrangements*). The bill provides technical changes to reflect current bill drafting practices and methods. The bill also provides other conforming changes.

Other Related Provisions

Section 48 amends s. 445.009, F.S. (*One-stop delivery system*). The bill provides conforming changes to the transfer of the UC program from the former Department of Labor and Employment Security to the Agency for Workforce Innovation. The bill also provides conforming changes, clarifying the one-stop delivery system operated by the Agency for Workforce Innovation under policy direction of Workforce Florida, Inc., rather than the public employment offices operated by the former Department of Labor and Employment Security, constitutes this state's public employment service as part of the national system of public employment offices under federal law. (See section 44 of the bill.)

Section 49 amends s. 468.529, F.S. (*Licensee's insurance; employment tax; benefit plans*). The bill clarifies that licensed employee leasing companies are required to notify the state agency providing unemployment tax collection services, rather than the former Division of Unemployment Compensation of the former Department of Labor and Employment Security, when they initiate or terminate their relationships with client companies. The bill also includes the addition of a cross-reference to s. 443.1316, F.S., clarifying the Department of Revenue is the state agency providing unemployment tax collection services under contract with the Agency for Workforce Innovation. (See section 36 of the bill.)

Section 50 amends s. 896.101, F.S. (*Florida Money Laundering Act; definitions; penalties; injunctions; seizure warrants; immunity*). The bill eliminates specific reference to the Department of Labor in a reference to the state's unemployment compensation records.

Repeals

Section 51 repeals s. 6 of ch. 94-347, L.O.F. This provision specifies that, if subsection (1) of s. 443.111, F.S., expires, a new subsection (1) would be reenacted and amended to require in-state claimants to report in person in order to receive unemployment benefits and to allow interstate claims to be paid by mail. Before 1994, s. 443.111(1), F.S., required claimants to report in person to receive unemployment benefits. Section 5 of ch. 94-347, L.O.F., authorized the Division of Unemployment Compensation to adopt rules prescribing the method for claimants to report, but provided for the expiration of this authorization on October 1, 1997. Section 443.111(1), F.S., was subsequently amended to delete the expiration date, but s. 6 of ch. 94-347, L.O.F., has not been repealed. Consequently, if s. 443.111(1), F.S., were to expire, s. 6 of ch. 94-347, L.O.F., would automatically reenact and amend this provision. The bill prevents the automatic reenactment and amendment of s. 443.111(1), F.S., through the repeal of s. 6, ch. 94-347, L.O.F. Current law allows the method of paying benefits to be prescribed by rule. (See section 25 of the bill.)

Section 52 repeals five sections of the Florida Statutes:

- Section 443.021, F.S. (*Declaration of public policy*) describes public policy and legislative intent for the UC law. (See section 15 of the bill.)
- Section 443.161, F.S. (*Administrative provisions*) contains several administrative provisions. Current law specifies that the salaries of the director of the Division of Unemployment Compensation and the members of the Unemployment Appeals Commission must be paid from the Employment Security Administration Trust Fund. Because the Division of Unemployment Compensation was abolished, there is no director who receives a salary from the trust fund. Further, s. 443.012(1)(e), F.S., specifies the salaries of commission members are paid from the trust fund. The current law also authorizes the Division of Unemployment Compensation to adopt rules for the destruction of obsolete records. Sections 119.041 and 257.36, F.S., govern the retention and destruction of public records through the information management program within the Division of Library and Information Services of the Department of State. Finally, current law requires the Division of Unemployment Compensation to apply to the Federal Government for advances in order to pay unemployment benefits if the state's Unemployment Compensation Trust Fund becomes insolvent and to accept responsibility for repayment of those advances. Federal law governs the payment of advances to insolvent state trust funds and the repayment of advances. Under Title XII of the Social Security Act (42 U.S.C. ss. 1321-1324), the Governor would be required to apply for any advances if needed by the state.
- Section 443.201, F.S. (*Unemployment Compensation Trust Fund to be sole source of benefits; nonliability of state*) specifies that the Unemployment Compensation Trust Fund is the sole and exclusive source for the payment of unemployment benefits and declares that the state is not liable for funds beyond the amounts received from the Federal Government. Although this provision is repealed by the bill, a substantially similar provision is created as s. 443.191(6), F.S. (See section 44 of the bill.) Current law also prohibits the repayment of interest on advances received from the Federal Government under Title XII of the Social Security Act from the Unemployment Compensation Trust Fund or directly or indirectly by an equivalent reduction in state unemployment taxes. This provision duplicates a federal provision in 42 U.S.C. s. 1322(5).
- Section 443.231, F.S. (*Florida Training Investment Program*) established the Florida Training Investment Program, which allowed the payment of up to an additional 26 weeks of unemployment benefits for certain dislocated workers enrolled in specified training programs. Under s. 443.231(8), F.S., this program was terminated effective June 30, 2002.
- Section 443.232, F.S. (*Rulemaking authority for ch. 92-38*) delegated rulemaking to the Division of Unemployment Compensation for the Florida Training Investment Program, which was enacted by ch. 92-38, L.O.F. This program was terminated effective June 30, 2002 (s. 443.231(8), F.S.).

Section 53 provides for the retroactive application of the amendments made by the bill to s. 443.163, F.S., relating to electronic reporting and remitting of contributions and reimbursements, for reports due on April 1, 2003. (See s. 40 of the bill.)

Section 54 provides an effective date of October 1, 2003, except as otherwise expressly provided in the bill (see e.g., section 18 of the bill).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may require short-term workload increases in the Agency for Workforce Innovation and the Department of Revenue to review and update existing administrative rules and associated forms used to administer the Unemployment Compensation Program. The bill may, however, reduce long-term workload demands associated with responding to public inquiries, legal research, and litigation of ambiguous provisions.

There may be additional costs to the department as a result of the changes made in s. 443.163, F.S., related to the electronic reporting and remitting of contributions and reimbursements [see Section 40 of the bill].

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill improves public notice of the current agency framework used to administer the Unemployment Compensation Law (ch. 443, F.S.) and reduces confusion by correcting or updating erroneous, obsolete, and archaic provisions. The bill may reduce costs associated with legal research and litigation of ambiguous provisions.

The bill removes a requirement that persons who prepare and report quarterly wages and unemployment contributions and reimbursements for 5 or more employers (e.g., certified public accountants) must submit the report and remit unemployment contributions or reimbursements due electronically. (See section 40 of the bill.) The removal of this requirement alleviates the administrative, legal, and ethical objections of certified public accounts concerning the impact of this requirement on accountancy and the potential loss of an accountant's independence from an employer for whom the unemployment forms are prepared.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill clarifies rule-making authority within and between the Agency for Workforce Innovation and the Florida Department of Revenue with regards to the interagency agreement/contract.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES