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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/01/2009	.	
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The Committee on Commerce (Detert) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

443.093 Drug Deterrence Pilot Program.-

(1) PURPOSE.-It is the intent of the Legislature to create within the Agency for Workforce Innovation the Drug Deterrence Pilot Program. The Legislature finds that illegal drug use is a threat to public safety. The purpose of this pilot program is to require the drug testing of certain individuals as a condition for unemployment benefits to prevent the enabling of drug use with government funds, thereby protecting the public.



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13           (2) SCOPE.—In addition to any benefit eligibility or  
14 disqualification conditions prescribed in this chapter, any  
15 individual making a claim for benefits or receiving benefits and  
16 residing within Regional Workforce Board 18 is subject to this  
17 section. As a condition to making a claim for benefits or  
18 accepting receipt of benefits, an individual must agree to  
19 comply with the terms of this section, including, but not  
20 limited to, agreeing to be subject to drug testing.

21           (3) DEFINITIONS.—As used in this section, the term:

22           (a) "Agency" means the Agency for Workforce Innovation.

23           (b) "Drug" means an amphetamine, a cannabinoid, cocaine,  
24 phencyclidine (PCP), a hallucinogen, methaqualone, an opiate, a  
25 barbiturate, a benzodiazepine, a synthetic narcotic, a designer  
26 drug, or a metabolite of any of the substances listed in this  
27 paragraph.

28           (c) "Drug test" or "test" means any chemical, biological,  
29 or physical instrumental analysis for the purpose of determining  
30 the presence or absence of a drug or its metabolites.

31           (4) CREATION.—

32           (a) The Agency for Workforce Innovation shall implement an  
33 unemployment compensation drug testing pilot program with  
34 Regional Workforce Board 18 no later than October 1, 2009.

35           (b) In creating and implementing the program, the agency  
36 shall:

37           1. Develop a screening mechanism used to assess whether a  
38 person is likely to be an illicit drug user;

39           2. Drug test individuals assessed to be likely illicit drug  
40 users;

41           3. Make a determination of eligibility under s. 443.091 and



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42 disqualification under s. 443.101 before an applicant is  
43 selected for drug testing;

44 4. Provide notice of the potential for drug testing to  
45 individuals claiming and receiving benefits; and

46 5. Require an individual to be tested to sign an  
47 acknowledgement that he or she has received notice of the  
48 agency's drug testing policy and that he or she has a right to  
49 refuse to take the drug test.

50 (5) TESTING; USE OF RESULTS.—

51 (a) An individual is disqualified from receiving or  
52 continuing to receive benefits upon:

53 1. Refusing to submit to testing under this section; or  
54 2. Upon testing positive for drugs as a result of a test  
55 under this section.

56 (b) If the individual fails the drug test required under  
57 this section, the individual is not entitled to unemployment  
58 benefits for up to 52 weeks, under rules adopted by the agency,  
59 and until he or she has earned income of at least 17 times his  
60 or her weekly benefit amount.

61 (c) The agency shall provide any individual who tests  
62 positive with information on drug treatment programs that may be  
63 available in the area in which he or she resides; however, the  
64 agency or the state is not responsible for providing or paying  
65 for drug treatment as part of the testing conducted under this  
66 section.

67 (6) TESTING.—

68 (a) All specimen collection and testing for drugs under  
69 this section shall be performed in accordance with the following  
70 procedures:



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71           1. A sample shall be collected with due regard to the  
72 privacy of the individual providing the sample, and in a manner  
73 reasonably calculated to prevent substitution or contamination  
74 of the sample.

75           2. Specimen collection must be documented, and the  
76 documentation procedures must include:

77           a. Labeling of specimen containers so as to reasonably  
78 preclude the likelihood of erroneous identification of test  
79 results.

80           b. A form for the person being tested to provide any  
81 information he or she considers relevant to the test, including  
82 identification of currently or recently used prescription or  
83 nonprescription medication or other relevant medical  
84 information. The form must provide notice of the most common  
85 medications by brand name or common name, as applicable, as well  
86 as by chemical name, which may alter or affect a drug test. The  
87 providing of information does not preclude the administration of  
88 the drug test, but must be taken into account in interpreting  
89 any positive, confirmed test result.

90           c. Specimen collection, storage, and transportation to the  
91 testing site must be performed in a manner that reasonably  
92 precludes contamination or adulteration of specimens.

93           (b) Every specimen that produces a positive test result  
94 must be preserved for at least 6 months. However, if the tested  
95 person undertakes an administrative or legal challenge to the  
96 test result, the sample shall be preserved until the case or  
97 administrative appeal is settled.

98           (c) An individual who tests positive for drugs may refute  
99 and rule out a false positive test by having the same sample



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100 retested by gas chromatography with mass spectrometry, gas  
101 chromatography, high performance liquid chromatography, or an  
102 equally or more specific test.

103 (d) Test results and chain-of-custody documentation  
104 provided to the agency by an approved drug-testing laboratory is  
105 self-authenticating and admissible in unemployment compensation  
106 hearings, and such evidence creates a rebuttable presumption  
107 that the individual used, or was using, drugs.

108 (7) APPEAL.—Any person who is deemed ineligible for, or is  
109 disqualified from, receiving unemployment benefits because of a  
110 positive drug test has a right to appeal the agency's decision  
111 pursuant to s. 443.151(4).

112 (8) RULES.—The agency shall adopt rules under ss.  
113 120.536(1) and 120.54 to administer the provisions of this  
114 section.

115 (9) REPORT.—

116 (a) The agency shall submit a report to the Governor, the  
117 President of the Senate, and the Speaker of the House of  
118 Representatives by January 1, 2011, which at a minimum:

119 1. Gives the number of individuals tested, the substances  
120 tested for, and the results of the testing;

121 2. Gives the number of individuals denied unemployment  
122 compensation benefits for failing a drug test upon claiming  
123 benefits and the number of individuals for whom benefits were  
124 terminated for failing a test while receiving benefits;

125 3. Describes any obstacles to implementation of the  
126 program;

127 4. Gives the number of applicants who refused to be tested;

128 5. Gives the number of weeks and the amount of benefits for



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129 which individuals would have been eligible if they had not  
130 tested positive or refused to take the test;

131 6. Estimates the costs of the drug testing program,  
132 including the average cost of individual tests and the cost of  
133 administering the program;

134 7. Estimates savings, if any, under the program to the  
135 Unemployment Compensation Trust Fund; and

136 8. Includes a recommendation on whether the Legislature  
137 should maintain the program.

138 (b) Before the 2011 Regular Session of the Legislature, the  
139 Office of Program Policy Analysis and Government Accountability  
140 shall review and evaluate the Drug Deterrence Pilot Program and  
141 submit a report to the Governor, the President of the Senate,  
142 and the Speaker of the House of Representatives. The report must  
143 evaluate whether the program is cost-effective and deters drug  
144 users from receiving benefits and make a recommendation to the  
145 Legislature to abolish, continue, reorganize, or expand the  
146 program.

147 (10) EXPIRATION.—This section expires on June 30, 2011.

148 Section 2. This act shall take effect July 1, 2009.

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

154 And the title is amended as follows:

155 Delete everything before the enacting clause

156 and insert:

157 An act relating to the drug testing of potential and



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158 existing beneficiaries for unemployment compensation; creating  
159 s. 443.093, F.S.; creating the Drug Deterrence Pilot Program  
160 within the Agency for Workforce Innovation; providing  
161 legislative intent; providing the scope of eligibility for  
162 benefits; defining terms; providing for the screening of  
163 individuals to determine which individuals must be tested;  
164 providing for notice; providing terms of disqualification of  
165 benefits; requiring the agency to supply information on drug  
166 treatment programs; providing for authentication and the  
167 admissibility of drug tests in unemployment compensation  
168 hearings; creating a rebuttable presumption; providing testing  
169 procedures; providing for the preservation of test samples;  
170 providing for the retesting of test samples; providing for an  
171 appeals process; authorizing the agency to adopt rules;  
172 directing the agency to submit a report to the Governor, the  
173 President of the Senate, and the Speaker of the House of  
174 Representatives; directing the Office of Program Policy Analysis  
175 and Government Accountability to submit a report to the  
176 Governor, the President of the Senate, and the Speaker of the  
177 House of Representatives; providing for expiration of the  
178 program; providing an effective date.

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