## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7147 PCB EDCA 09-07 Unemployment Compensation Trust Fund
**SPONSOR(S):** Economic Development & Community Affairs Policy Council and Murzin
**TIED BILLS:** **IDEN./SIM. BILLS:**

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
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| Orig. Comm.: | Economic Development & Community Affairs Policy Council | 14 Y, 0 N | West | Tinker |
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### SUMMARY ANALYSIS


Unemployment insurance provides temporary income payments to make up part of the wages lost by workers who lose their jobs through no fault of their own, and are able and available for work. It is job insurance paid for by a tax on business.

Unemployment claims are paid from the Unemployment Compensation Trust Fund (UCTF). Due to the number of unemployed Florida residents, the UCTF is expected to be in a hard deficit beginning in August 2009. The Office of Economic and Demographic Research (EDR) estimates the UCTF will be in a deficit of -$76.4 million for August 2009 and throughout the calendar year, the UCTF balance will get progressively lower.

Estimated deficit balances for calendar year 2009:

-$373.6 million for September 2009
-$656.2 million for October 2009
-$867.7 million for November 2009
-$1.2 billion for December 2009

The bill increases that wage base on which unemployment benefits are calculated from $7,000 to $8,500. Employers will now be taxed on the first $8,500 of wages paid to employees. This provision sunsets January 1, 2015.

The bill permanently increases the lower trigger on the state's UCTF from 3.7 percent to 4 percent and increases the upper trigger from 4.7 percent to 5 percent. When calculations indicate the UCTF contribution rate as a percentage of taxable payrolls for employers is below 4 percent, tax rates on employers will increase (positive adjustment). When the contribution rate as a percentage of taxable payrolls eclipses 5 percent, tax rates on employers will decrease (negative adjustment).

When the contribution rate is below 4 percent, tax rates increase during a recoupment period where the UCTF revenues are stabilized. The bill shortens the recoupment period from 4 years to 3 years. This provision sunsets January 1, 2015.

The bill prevents a negative adjustment on employer's tax rates until 2015 if the UCTF balance falls below 5 percent of taxable payrolls or if there is an unpaid balance to the federal government.

The bill provides that the Governor or the Governor's designee may request advances from the state's account in the federal UCTF pursuant to 42 U.S.C. s. 1321.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

Unemployment Compensation Background[1]
In the Great Depression of the 1930s millions of workers lost their jobs and were faced with suffering and hardship. The economic structure of America was in crisis. One of the measures to help prevent such calamities in the future was the establishment of a nationwide program of Unemployment Insurance and Public Employment Offices. Every state now has an unemployment insurance program, provides reemployment services through local One-Stop Career Centers and operates a program for Labor Market Statistics (LMS).

In 1937, the Legislature created Florida's Unemployment Compensation (UC) program. The program is currently administered by the Agency for Workforce Innovation (AWI).

Unemployment insurance provides temporary income payments to make up part of the wages lost by workers who lose their jobs through no fault of their own, and are able and available for work. It is job insurance paid for by a tax on business. The objective is to provide a cushion to absorb some of the shock of unemployment to jobless workers and their families and the business community. This temporary income, plus other resources, helps workers sustain their families when they are without jobs. It also keeps money flowing into Florida businesses as the unemployed workers spend these payments to provide for their needs until they can obtain jobs or the duration of benefits ends. Thus, it helps maintain purchasing power which many consider the key to business prosperity. In this way it promotes economic stability and helps to stave off the downward cycle that leads to depression.

Who Pays?
The Federal Unemployment Tax Act provides for cooperation between state and federal governments in the establishment and administration of the Unemployment Compensation Program. Under this dual system, the employer pays payroll taxes levied by both the state and federal governments.

*State Unemployment Tax Act (SUTA)*
All unemployment tax payments are deposited to the Unemployment Compensation Trust Fund (UCTF) for the sole purpose of paying benefits to eligible claimants. The employer pays for this Unemployment Compensation Program as a cost of doing business. Workers do not pay any part of the Florida

[1] A substantial portion of this section was derived from: Florida Department of Revenue, Unemployment Compensation Handbook. Found at https://taxlaw.state.fl.us/uct_ehb.aspx?file=uct_ehb. (visited 4/7/09)

unemployment tax and employers must not make payroll deductions for this purpose. This cost is passed on to consumers in the price of goods or services. Thus, the burden of the economic hazard of unemployment is shared by all. Employers with stable employment records receive credit for this in reduced tax rates after a qualifying period.

*Federal Unemployment Tax Act (FUTA)*
Federal unemployment taxes are deposited to the FUTA Trust Fund and administered by the United States Department of Labor (USDOL) for funding the administrative costs of state unemployment compensation, One-Stop Career Centers, and part of Labor Market Statistics Programs. The USDOL is also charged with monitoring state Unemployment Compensation Programs and can withhold funds from a state if it does not comply with federal standards.

Benefits
Unemployed workers covered under the Florida Unemployment Compensation Law receive weekly benefits if eligible and fully qualified. These benefits are paid from the Florida UCTF, made up of taxes received from employers subject to the law and from interest earned by the fund. Taxes paid to the state by employers are used solely for the payment of benefits to eligible unemployed workers.

Monetary Qualifications
An unemployed worker can qualify for benefits only if the individual has worked in covered employment and earned a minimum amount of wages in the base period.

- The claimant's base period is the first four of the last five completed calendar quarters.
- There must be wages in two or more quarters in the base period.
- There must be a minimum of $3,400 in the base period and the claimant must have 1.5 times the high quarter wages in the base period.
- The weekly benefit amount is 1/26th of the high quarter wages (the minimum is $32 and the maximum is $275).
- The maximum payable on a claim is 25 percent of the total wages in the base period, not to exceed $7,150.

Qualifying for Benefits
To be eligible for benefits, the worker must, for each week benefits are claimed:

- Be totally or partially unemployed.
- File an initial claim for benefits and report as directed to file for subsequent weeks.
- Have the necessary wage credits for work in covered employment during the base period.
- Have worked and earned three times the current weekly benefit amount since the filing date of the prior claim, providing the individual received benefits on the prior claim.
- Be able to work and available for work, and be registered for and seeking work.
- Participate in reemployment services, such as job search assistance services, whenever the individual has been determined to be likely to exhaust regular benefits and to be in need of reemployment services.
- Serve a waiting week, for which no benefits are payable, after filing an initial claim.

How Benefits Are Charged
Unemployment compensation benefits paid to eligible claimants are paid from the UCTF and are charged to employers on a percentage basis. The percentage chargeable is based on the amount of wages each employer paid the worker as compared to the worker's total wages for insured work during the base period of the claim. For example, if there were only two base period employers, each having paid $3,000 in the base period, each would be chargeable with 50 percent of the benefits paid to the claimant.

Benefit payments made to any eligible claimant shall be charged to the taxpaying employer's experience rating record when the employer paid the individual wages of $100 or more within the base period of the claim. Each employer’s tax rate varies and is calculated using the benefit ratio method of experience rating. A taxpaying employer who pays less than $100 within the base period will not be charged.

Tax and Wage Reporting

During the last week of each calendar quarter a preprinted tax and wage report form is mailed to each liable employer, except employers obligated to file electronically and employers who employ individuals that perform domestic service and have been approved for annual filing.

The tax portion of the quarterly report is used to record information needed to compute and verify the amount of tax owed by the employer. This information includes total wages paid for covered employment, wages in excess of the taxable limit, and taxable wages. Some information requested on the tax portion is required by the federal government and is used for statistical purposes, such as the number of all full-time and part-time covered workers who performed services during or received pay for the payroll period including the 12th of the month.

The wage portion is used to determine eligibility for unemployment compensation benefits when a claim is filed. The employer must list, for all employees, the name, social security number, and total wages paid. Employee information is maintained in the wage record file and is used in the event a claim for benefits is filed.

All remuneration (compensation or payment) for employment, including commissions, bonuses, back pay awards, and the cash value of all remuneration paid in any medium other than cash must be reported. Total wage reports must correspond with the period in which they were paid, not the period in which they were earned. The amount of benefits available to an eligible claimant is based on total wages paid. Failure to accurately report wages increases the possibility of incorrect benefit payments to an eligible claimant or payment of benefits to an individual who does not meet the unemployment compensation eligibility requirements.

Employers must submit a report every quarter regardless of employment activity. An employer may not have to pay tax for a particular quarter because: (1) there were no employees or (2) all wages were excess wages. Although no tax is due, a report must be filed and the penalty provisions of the law apply if the report is filed late.

Tax Rate and Recoupment

The method of determining varying tax rates assigned to taxpaying employers is referred to as "experience rating." Under the unemployment compensation law, an employer's experience rate is based on the employer's own employment records in relation to the experience records of all other employers.

The purpose of the experience rating provision of the Florida Unemployment Compensation Law is to keep the UCTF stabilized between 3.7 percent and 4.7 percent of the taxable payrolls reported by all employers, and to insure that employers with higher unemployment benefit costs pay at a higher tax rate. Variable adjustment factors and constant adjustment factors are computed yearly. These factors are used to help compensate the trust fund for the benefits paid to eligible claimants who worked for employers whose taxes were less than the amount of benefits paid, and benefit payments which are not chargeable to any employer's account. These charges are distributed to all rated employer accounts. Once rated, an employer's tax rate may vary each year according to employment experience. The tax rate can vary from the maximum of 5.4 percent (.0540) to the minimum rate of 0.10 percent (.0010) as mandated by law. Employers participating in an approved Short-Time Compensation Plans are subject to a rate of one percent above the current maximum rate.

Current law provides for a trigger mechanism to adjust taxable rates when the UCTF balance reaches certain levels. When the contribution rate is computed as less than 3.7 percent of the taxable payrolls, a positive tax rate adjustment will be computed and businesses will pay a higher tax rate. When the contribution rate is computed as more than 4.7 percent of the taxable payrolls, a negative tax rate adjustment will be computed and businesses will pay a lower tax rate. The new tax rates are computed so that the increased taxes will provide the fund with revenue to recoup funds lost. The recoupment period is designed to lower the contribution rate to 3.7 percent. The increased tax rate is computed so that funds necessary to restore fund stabilization will be paid out over four years. The 2002 Florida Legislature lowered the thresholds from 4 percent to 3.7 percent and from 5 percent to 4.7 percent, respectively.[2]

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

When an employer becomes liable for the payment of taxes, the beginning tax rate is .0270 until the employer has reported for ten or eleven quarters, depending on the quarter of the year the employer established liability. The account will then be rated by dividing the benefits charged to the account (seven quarters) by the taxable payroll on which wages were reported by the end of the quarter preceding the quarter in which the tax rate is to be computed. Once an account has completed the required quarters of reporting, it will then be considered for an experience rate at the beginning of each calendar year thereafter.

<u>Taxable Wage Base</u>
The taxable wage base in Florida is the first $7,000 in wages paid to each employee during a calendar year. The taxable wage base amount was last raised in 1983, from $6,000 to $7,000.[3]

If an employee works for two or more employers, each of the employers is required to pay tax on the first $7,000 of wages paid without regard to earnings with any other employer. However, when a business is transferred, the successor employer may count wages paid to an employee by the predecessor employer for purposes of determining the taxable wage base, whether or not a transfer of experience rating record is elected.

<u>Reporting Wages</u>
As a general rule, if the work promotes, advances, or aids the employer's trade or business and is not performed by a recognized independent contractor, the services are considered to be employment and the wages paid are taxable regardless of the amount of time employed and/or the amount of earnings.

<u>Unemployment Compensation Trust Fund</u>
The Office of Economic and Demographic Research (EDR) estimates the UCTF will become insolvent in August of 2009.[4] EDR projects an ending balance deficit of -$76.4 million for August 2009. Throughout the calendar year, the UCTF balance will get progressively lower.

Estimated deficit balances for calendar year 2009:

-$373.6 million for September 2009
-$656.2 million for October 2009
-$867.7 million for November 2009
-$1.2 billion for December 2009

<u>Advances</u>
With unemployment rising, the projected balance in the UCTF on June 30, 2009 will trigger a tax rate increase that will become effective January 1, 2010. The delay in receipts of increased contributions, along with any increase in total unemployment payments after June 30, 2009, will require Florida to request an advance from the U.S. Treasury pursuant to 42 U.S.C., s. 1321.

The U.S. Treasury Department can write checks for a state unemployment account provided that legal spending authority exists for such spending. That is, the state unemployment account has a positive

[2] Chapter 2002-218, Laws of Florida.
[3] Chapter 1983-10, Laws of Florida.
[4] <u>Office of Economic and Demographic Research</u>; Baseline UCTF Forecast Sheet. (Document on file with Economic Development and Community Affairs Council).

balance. During some recessions, current taxes and reserve balances are insufficient to cover expenditures for UC benefits. Therefore, some state unemployment accounts require loans. Like other transactions of the UCTF, these are book account transactions that involve no exchange of cash. The loans are additional credits to a state unemployment account. Subsequent repayment of these loans reduces the credits in the state unemployment accounts.

The American Recovery and Investment Act of 2009 provides that from February 17, 2009 through December 31, 2010, any interest payments due from a state for advances related to unemployment compensation will be waived. However, after December 31, 2010, any accrued interest must be paid with state funds, most likely from the General Revenue Fund because interest cannot be paid from the state's UCTF.

**Effects of Proposed Changes**

Tax Rate and Recoupment
The bill increases the contribution rate as a percentage of taxable payrolls for employers. When the contribution rate of the UCTF is computed as less than 4 percent of taxable payrolls, taxable rates will increase. When the contribution rate of the UCTF is computed as more than 5 percent of taxable payrolls, taxable rates on employers will decrease. The new contribution rate percentages serve as the new trigger mechanism. The 4 percent contribution rate will serve as the trigger to increase taxable rates and the 5 percent contribution rate will serve as the trigger to decrease taxable rates. The new tax rates are permanent.

The bill reduces the recoupment period for the UCTF from 4 years to 3 years. Tax rates to address fund stability will be calculated so that the UCTF is restored to previous levels in 3 years instead of 4 years. This provision will sunset January 1, 2015.

The bill provides that no negative adjustments may be made to employer's tax rates until 2015 if the UCTF balance falls below 5 percent of total taxable payrolls or if there is an unpaid balance to the federal government. The positive adjustment will remain in effect and there will be no negative adjustment to tax rates for employers until the contribution rate as a percentage of taxable payrolls equals or exceeds 5 percent.

The bill provides that the "taxable payroll" for the UCTF is determined by excluding any wages paid to an employee for employment in excess of the first $7,000 during a calendar year. The UCTF wage base is used as the denominator in calculations. Increasing this number reduces tax revenues received by the fund.

Taxable Wage Base
The bill increases, from $7,000 to $8,500, the taxable wage base on which unemployment benefits are calculated. Businesses will have to pay tax on the first $8,500 of wages paid to each employee without regard to earnings employees generated under another employer. This provision will sunset January 1, 2015.

Advances
The bill provides that the Governor or the Governor's designee may request advances from the state's account in the federal UCTF pursuant to 42 U.S.C. s. 1321.

B. SECTION DIRECTORY:

**Section 1:** Increases the taxable wage base used to calculate unemployment benefits from $7,000 to $8,500 and sunsets the provision January 1, 2015.

**Section 2:** Permanently increases the UCTF trigger thresholds from 3.7 percent to 4 percent and from 4.7 percent to 5 percent, respectively; reduces the recoupment period from 4 years to 3 years and sunsets that provision on January 1, 2015; prevents lowering of tax rates if there is an unpaid balance to the federal government or until the trust fund balance equals or exceeds 5 percent of taxable payrolls; and defines "taxable payroll."

**Section 3:** Provides that advances on the amount in the federal UCTF will be credited to Florida under 42 U.S.C., s. 1321, as requested by the Governor or designee.

**Section 4:** Provides that the bill is effective upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of this bill will increase tax rates on Florida businesses.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On Tuesday April 14, 2009, the Economic Development and Community Affairs Policy Council reported the bill favorably with two amendments. The amendments:

- Provided that the positive adjustment would remain in effect and there would be no negative adjustment to tax rates for employers until the contribution rate as a percentage of taxable payrolls equals or exceeds 5 percent; and

- Moneys may be requisitioned from the state's account in the federal Unemployment Compensation Trust Fund for the repayment of advances made pursuant to 42 U.S.C. s. 1321, as authorized by the Governor or the Governor's designee.