

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1122

INTRODUCER: Senator Braynon

SUBJECT: Florida Business and Workforce Competitiveness Trust Fund/Department of Economic Opportunity

DATE: January 19, 2018

REVISED: 1/22/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u></u>	<u></u>	<u>ATD</u>	<u></u>
3.	<u></u>	<u></u>	<u>AP</u>	<u></u>

I. Summary:

SB 1122 creates the Florida Business and Workforce Competitive Trust Fund for use as an additional revenue source to award incentive grants to employers who hire individuals receiving reemployment assistance benefits.

Moneys in the trust fund are used to award the incentive grants. The moneys are composed of a quarterly employment and training investment assessment created by the bill. Beginning July 1, 2018, employers in the state who are currently required to pay reemployment assistant taxes under s. 443.131, F.S., at a rate of less than 5.4 percent, must pay the additional assessment created by the bill. The assessment amount is equal to one-tenth of 1 percent of the wages paid by the employer. The collection and administration of the assessment must be allocated based on a plan approved by the United States Department of Labor.

CareerSource Florida, Inc., must allocate funds to each local workforce development board, for the purpose of awarding incentive grants to employers who hire unemployed individuals. The bill also requires CareerSource Florida, Inc., to establish guidelines governing the administration of the trust fund and criteria to assist local workforce development boards in evaluating applications for incentive grant funding.

The Revenue Estimating Conference has not yet reviewed the fiscal impact of the bill. The Department of Revenue expects to incur non-recurring costs of approximately \$358,000 to implement the bill.

II. Present Situation:

Unemployment Compensation Overview

The federal Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own and who meet the requirements of state law. The program is administered as a partnership of the federal government and the states.¹ The individual states collect unemployment compensation payroll taxes on a quarterly basis, which are used to pay benefits. Subject to the approval of the United States Department of Labor (USDOL), each state also sets tax rates, benefit levels, and trust fund balances based on the state's needs.²

The Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA),³ used to provide grants to the states to fund costs associated with program administration and job service programs.⁴ In addition to FUTA, Florida employers are required to pay a state tax on the first \$7,000 of each employee's annual income, which is deposited into Florida's Unemployment Compensation Trust Fund (UC Trust Fund), an account used to pay unemployment compensation benefits.

Florida's most recent data indicates an unemployment rate of 3.6 percent,⁵ which is lower than the national unemployment rate of 4.1 percent.⁶

Florida's Workforce Development System Overview

The Department of Economic Opportunity (DEO), CareerSource Florida, Inc. (CareerSource Florida), and 24 local workforce development boards (LWDBs) act as partners in administering Florida's comprehensive system for the delivery of workforce strategies, services, and programs.

The DEO serves as Florida's lead workforce agency⁷ and is responsible for the fiscal and administrative affairs of the workforce development system.⁸ The DEO is also responsible for financial and performance reports, which are provided to the USDOL and other federal organizations.⁹ CareerSource Florida is a not-for-profit corporation that assists the DEO with state-level policy, planning, performance evaluation, and oversight of the delivery of workforce

¹ There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

² USDOL, Employment and Training Administration, *State Unemployment Insurance Benefits*, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited Jan. 19, 2018).

³ 26 U.S.C. 3301-3311.

⁴ FUTA also pays one-half the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits. See USDOL, Employment and Training Administration, *Unemployment Insurance Tax Topic*, available at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited Jan. 19, 2018).

⁵ DEO, *Unemployment Rate Seasonally Adjusted*, available at http://lmsresources.labormarketinfo.com/charts/unemployment_rate.asp (last visited Jan. 19, 2018).

⁶ See USDOL, *Labor Force Statistics from the Current Population Survey*, available at <https://www.bls.gov/cps/> (last visited Jan. 19, 2018).

⁷ Primarily through its Division of Workforce Services. See s. 20.60, F.S.

⁸ Section 445.009(3)(c), F.S.

⁹ See s. 20.60, F.S.

services.¹⁰ CareerSource Florida is responsible for developing and implementing a 5-year state plan for the delivery of workforce services and is required to provide an annual report containing information regarding its operations, accomplishments, and audits.¹¹ The DEO and CareerSource Florida deliver Florida's workforce development services through the LWDBs and nearly 100 one-stop career centers.¹² One-stop career service centers provide Floridians local access to available workforce services, including job placement, career counseling, and skills training.¹³

Florida's Reemployment Assistance Program

Florida's unemployment insurance program was created by the Legislature in 1937,¹⁴ and was rebranded as the "Reemployment Assistance Program" in 2012.¹⁵ The DEO is responsible for administering the program.¹⁶ In addition to determining claimant eligibility, the DEO also determines the calculation and payment of reemployment assistance (RA) benefits to eligible claimants. The Department of Revenue (DOR) provides tax collection services on behalf of the DEO and deposits the taxes into the state's Unemployment Compensation Trust Fund (UC Trust Fund).¹⁷ The UC Trust Fund is used solely for the purpose of paying benefits to eligible claimants.¹⁸

Reemployment Assistance Tax Liability

Florida employers are required to pay state taxes into Florida's RA program as a cost of doing business. Employers must file quarterly reports and pay taxes within one month following after the close of each quarter. New businesses are required to report initial employment information in the month following the calendar quarter in which employment begins. The DOR reviews the reports and makes a determination of whether the business is liable to pay RA taxes.¹⁹

Generally, a business is liable to pay state reemployment tax if in the current or preceding calendar year, the employer:

- Paid more than \$1,500 in quarterly wages in a calendar year;
- Had at least one employee for any portion of a day during any 20 weeks in a calendar year;
or
- Is liable under the FUTA as a result of employment in another state.²⁰

¹⁰ See s. 445.004, F.S.

¹¹ The report must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader by December 1 each year. See s. 445.004, F.S.

¹² Florida Department of Economic Opportunity, *CareerSource Florida Center Directory*, <http://www.floridajobs.org/onestop/onestopdir/> (last visited Jan. 19, 2018).

¹³ See s. 445.009, F.S.

¹⁴ Chapter 18402, Laws of Fla.

¹⁵ Chapter 2012-30, Laws of Fla.

¹⁶ Section 20.60(5)(c), F.S. and Section 443.171, F.S.

¹⁷ Section 443.1316, F.S.

¹⁸ Sections 443.131 and 443.191, F.S.

¹⁹ DOR, *Employer Guide to Reemployment Tax*, available at http://floridarevenue.com/Forms_library/current/rt800002.pdf (last visited Jan. 19, 2018).

²⁰ Section 443.1215, F.S.

Florida law also specifies separate liability requirements for agricultural and domestic employers, nonprofit organizations, governmental agencies, and Indian tribes.²¹ Businesses that are otherwise not subject to RA taxation may opt to voluntarily pay into the UC Trust Fund for coverage for their employees.²²

Payment of Reemployment Assistance Taxes

Employers required to pay RA taxes are assigned a 7-digit account number, which must be identified on all transactions with the DOR. Any employer is able to file and pay RA taxes electronically. However, employers that employ 10 or more employees in any quarter during the year, and agents that prepare quarterly reports for 100 or more employers in any quarter, are required to file their quarterly reports and pay taxes electronically.²³

Reemployment Assistance Tax Rates

An employer's contributions are equal to a percentage of its wages paid for employment.²⁴ The standard rate of contributions payable is 5.4 percent,²⁵ which is also the maximum allowable tax rate under current law.²⁶ New employers are liable to pay an initial contribution of 2.7 percent, which remains in effect until the employer has made contributions for at least eight consecutive quarters.²⁷

An employer with record of at least eight quarters of contributions may be eligible to receive a variable tax rate. Variable tax rates are adjusted annually and are based on the employer's benefit experience, the balance of the UC Trust Fund, and other adjustment factors. The variable rates range from 5.4 percent to the minimum allowable tax rate, which varies annually but can never be less than 0.1 percent.²⁸

An employer's benefit experience rating is based on a comparison of the previous 12 consecutive quarters of the employer's employment records in relation to the records of all other employers.²⁹ The benefit ratio divides the benefits charged during the previous three years by the taxable wages during the same timeframe. The purpose of using the experience rating to determine RA tax rates is to stabilize the UC Trust Fund at a percentage of the taxable payrolls reported by all employers and to ensure employers are required to pay a fair share. When an eligible claimant collects RA benefits, an employer is "charged" and the employer will likely see an increased tax rate. Additionally, any employer who has been billed for an outstanding tax debt for one year or longer is assigned a penalty tax rate of 5.4 percent.

²¹ See generally ch. 443, F.S.

²² If an employer voluntarily provides coverage, the employer must report wages and pay RA taxes for a minimum of one calendar year. Section 443.121(3), F.S.

²³ DOR, *Employer Guide to Reemployment Tax*, available at http://floridarevenue.com/Forms_library/current/rt800002.pdf (last visited Jan. 19, 2018).

²⁴ Employers are required to pay taxes on the first \$7,000 of each employee's wages. Section 443.1217(2), F.S.

²⁵ Section 443.131(2)(c), F.S.

²⁶ See s. 443.131(2)(e), F.S.

²⁷ Section 443.131(2)(a), F.S.

²⁸ The final adjustment factor spreads costs not included in the variable adjustment factor to all employers whose rates are not at the initial or maximum rate. The final adjustment factor determines the minimum tax rate for the year.

²⁹ Employers that paid the initial tax rate for at least eight consecutive quarters may also be assigned a benefit ratio, which requires a separate calculation to be computed by the DOR.

Penalties for Noncompliance

Employers who fail to file timely on or before the due date are charged interest on the full amount of tax due. Employers who fail to file quarterly reports timely are charged a penalty of \$25 for each 30 days. Current law also imposes a penalty of \$50 per report and \$1 for each employee against employers who are required to file electronically and fail to do so. Additionally, the penalty for failing to submit payments by electronic means is \$50 per remittance submission.³⁰

Failure to submit a report after being given a reasonable time to do so will result in an assessment of the tax due by the DOR and will be reflected on the tax rate assigned to the employer. Unpaid tax, interest, penalty, or fees can also result in a lien against the employer's real and personal property.³¹

The DOR advises that employers can protect their reduced variable rate by timely reporting new hires, responding to requests for verification of weekly earnings, and providing complete and accurate quarterly reports.³²

Section 443.071, F.S., makes it illegal for any person or employing unit to make a false statement or representation for the purposes of preventing or reducing the cost of RA taxes. Each false statement or representation or failure to disclose a material fact constitutes a separate offence, and is considered a felony of the third degree. Individuals and employing units that fail to furnish required reports are also subject to a second-degree misdemeanor charge.

Unemployment Compensation Trust Fund

Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. This effect triggers the positive fund balance adjustment factor, which consequently increases tax rates for all employers. Conversely, when unemployment and benefit charges are low, the negative fund balance adjustment factor triggers, and tax rates for employers are reduced accordingly.³³

Under current law, a negative adjustment factor is required if the balance of the UC Trust Fund is greater than 5 percent of the taxable payrolls. A negative adjustment factor remains in effect until the balance of the UC Trust Fund is less than 5 percent, but more than 4 percent, of the total taxable payroll for the previous year.³⁴ A positive adjustment factor is required if the balance of the UC Trust Fund is less than 5 percent of the taxable payrolls. A positive adjustment factor

³⁰ Section 443.163, F.S.

³¹ DOR, *Employer Guide to Reemployment Tax*, available at http://floridarevenue.com/Forms_library/current/rt800002.pdf (last visited Jan. 19, 2018).

³² *Id.*

³³ During the years of 2010-2014, the Legislature made efforts to temporarily increased the tax wage base from \$7,000 to \$8,500, increased the trigger for the positive adjustment factor from 3.7 percent to 4 percent, and reduced the trigger for the negative adjustment factor from 4.7 percent to 5 percent. The Legislature also reduced the tax wage base and the adjustment factor triggers as the economy stabilized. *See* Ch. 2009-99, Laws of Fla., Ch. 2010-1, Laws of Fla., Ch. 2011-235, Laws of Fla., and Ch. 2012-30, Laws of Fla.

³⁴ Section 443.131(3)(e), F.S.

remains in effect until the trust fund balance equals or exceeds 4 percent of the total taxable payroll for the previous year.³⁵

According to a report published by the USDOL, Florida's UC Trust Fund held a balance of over \$3.6 billion at the close of the third quarter in 2017.³⁶ In determining the 2018 tax rate, the DOR determined the balance of the UC Trust Fund was above 5% of the taxable payroll from the previous year. Pursuant to s. 443.1316, F.S., a negative adjustment factor was calculated. The maximum tax rate remains at 5.4 percent and the minimum amount remains at the statutory limit of .01 percent.³⁷

III. Effect of Proposed Changes:

The bill creates the Florida Business and Workforce Competitiveness Trust Fund (FBWC Trust Fund) within the State Treasury, to be administered by the DEO.

The bill provides that the FBWC Trust Fund is established as an additional revenue source to support the growth of business in the state and provide workforce training needed to effectively address changing skill requirements as a result of new technology, retooling, new product lines, and new organizational structuring.

Beginning July 1, 2018, the bill imposes a quarterly employment and training investment assessment on employers who are currently paying contributions under s. 443.131, F.S., at a rate of less than 5.4 percent. The assessment amount is equal to one-tenth of 1 percent of the wages paid by the employer and the assessments must be used to fund the FBWC Trust Fund, which will then be provided to local workforce development boards for the purpose of awarding incentive grants to employers who hire unemployed individuals. The assessment is due at the same time, collected in the same manner, and is subject to the same penalties and interest as other contributions under s. 443.131, F.S. The assessment may not be collected in any year the balance of the UC Trust Fund requires a positive adjustment factor.

The bill directs each local workforce development board to determine award recipients and administer the incentive grants. The bill also directs CareerSource Florida to:

- Establish guidelines governing the administration of the FBWC Trust Fund;
- Establish criteria to be used by local workforce development boards in evaluating applications for funding; and
- Allocate funds to each local workforce development board.

The bill specifies that administrative costs associated with the collection of the assessment must be paid out of the revenue generated from the assessment and that the collection and administration of the assessment must be based on a plan approved by the USDOL.

³⁵ See s. 443.131(3)(e), F.S.

³⁶ USDOL, Unemployment Insurance Data Summary, 3rd Quarter 2017, available at https://workforcesecurity.doleta.gov/unemploy/content/data_stats/datasum17/DataSum_2017_3.pdf (last visited Jan. 19, 2018).

³⁷ Email from the DOR on Jan. 18, 2018 (on file with the Commerce and Tourism Committee).

The FBWC Trust Fund will terminate 4 years after its creation pursuant to s. 19(f)(2), Art. III of the State Constitution, unless terminated sooner. Before its scheduled termination, the trust fund must be reviewed as provided subsections (1) and (2) of s. 215.3206, F.S.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Article VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

To the extent the bill requires cities and counties to expend funds to pay the employment and training investment assessment, the provisions of Section 18(a), Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest and one of the following relevant exceptions:

- Appropriate funds estimated at the time of enactment to be sufficient to fund such expenditures;
- Authorize a county or municipality to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons “similarly situated,” including state and local governments;³⁸ or
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Article III, section 19(f) of the Florida Constitution prohibits the Legislature from creating or recreating a trust fund without a three-fifths vote of the membership of each house of the legislature in a separate bill for that purpose only. In addition to creating the FWBC Trust Fund, the bill also establishes the employment and training investment assessment and directs CareerSource Florida to allocate the funds and implement an application process for the incentive grants.

³⁸ “Similarly situated” refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities.

D. Other Constitutional Issues:

The government of the State of Florida is organized according to the doctrine of the separation-of-powers, which is specifically enshrined in Article II, s. 3 of the State Constitution:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Two fundamental prohibitions are contained in the separation of powers doctrine in Florida. The first is that no branch may encroach upon the powers of the other; the second is that no branch may delegate to another branch its constitutionally assigned power.³⁹ Under the nondelegation doctrine, however, the legislature “may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law.”⁴⁰ Further, the nondelegation doctrine precludes the legislature from delegating its powers “absent ascertainable minimal standards and guidelines.”⁴¹

This bill directs CareerSource Florida to allocate funds to local workforce development boards, absent any standards, guidelines, or funding restrictions beyond providing “workforce training needed to effectively address changing skill requirements.”

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill. However, the bill imposes an assessment equal to one-tenth of 1 percent of the wages paid by an employer if the employer currently contributes less than the maximum allowable rate of RA taxes, which will likely increase the payroll tax burden incurred per employee.

B. Private Sector Impact:

Employers who are currently taxed for RA taxes at a rate of less than 5.4 percent must pay the additional assessment fee created by the bill. However, the rate increase may be offset by a rate reduction if CS/SB 1124 is enacted.

³⁹ *Chiles v. Children A, B, C, D, E & F*, 589 So.2d 260, 266 (Fla.1991)

⁴⁰ *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26, 29 (Fla. 1st DCA 2008) (citing *Sims v. State*, 754 So.2d 657, 668 (2000)).

⁴¹ *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26, 30 (Fla. 1st DCA 2008) (citing *Dep't of Bus. Reg., Div. of Alcoholic Beverages; Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985)).

C. Government Sector Impact:

The bill does not specify whether the assessment applies to public employers⁴² currently paying RA taxes.

The DOR estimates that the cost of implementing the bill will be approximately \$358,000 in nonrecurring funds. The estimate reflects the costs associated with modifying the existing tax collection system and notifying employers of the assessment.⁴³

The DEO and the Revenue Estimating Conference have not yet determined the fiscal impact of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Pursuant to the FUTA, the USDOL oversees Florida's collection of unemployment taxes and must approve the state's tax fee structure. The Secretary of the USDOL is responsible for determining if a state's unemployment insurance law meets the requirements of federal law. Under the FUTA, the secretary annually certifies the state's compliance with federal requirements and this certification ensures that employers in the state are eligible for the full credit against the federal unemployment insurance tax. If the USDOL were to find provisions of the bill to be out of compliance, the USDOL might not certify the state's reemployment assistance program and could potentially withhold all administrative funding or cause the employer federal tax rates to increase because of loss of the entire FUTA tax credit. It is unclear whether the USDOL would approve the provisions in the bill that impose an additional assessment on employer payroll taxes and whether the USDOL would be able to do so by the effective date of the bill.

Lines 38 to 39 provide the incentive grants must be awarded "to employers to hire unemployment compensation claimants." Under state law, unemployed individuals receive "reemployment assistance benefits" after the DEO makes a determination as to the eligibility of the claimants. The language would be more accurate if the bill clarified that the incentive grants are awarded "to employers for the purpose of hiring individuals currently receiving reemployment assistance benefits."

Line 68 refers to administrative costs associated with the collection of "the trust fund" rather than "the assessment."

The enactment of CS/SB 1124 is contingent on the enactment of this bill, or similar legislation.

⁴² Public employers include state agencies, political subdivisions of the state, and their instrumentalities. Section 443.036, F.S.

⁴³ DOR, 2018 Agency Legislative Bill Analysis, *SB 1122* (Dec. 15, 2017) (on file with the Commerce and Tourism Committee).

VIII. Statutes Affected:

This bill creates section 445.015 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
