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 1124

INTRODUCER: Senator Braynon

SUBJECT: Reemployment Assistance Program Law Contribution Rates

DATE: January 19, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	**Pre-meeting**
2.			ATD	
3.			AP	

I. Summary:

SB 1124 directs the Department of Revenue to reduce the tax rate of each employer who currently pays reemployment assistance taxes at a rate below 5.4 percent if SB 1122 or similar legislation is enacted. The rate must be reduced by .01 percent each year, beginning on January 1, 2019, so long as the balance of the state's Unemployment Compensation Trust Fund does not require a positive adjustment factor.

The bill also provides that an employer whose tax rate falls below 1 percent, based on the .01 percent adjustment, will be allowed to pay less than the minimum tax rate of 0.1 percent.

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 $9,300 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]

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[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).

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 agency[7] 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 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]

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[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.
[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.

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]

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

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[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.
[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.

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.

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

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[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.

[30] Section 443.163, F.S.

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 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]

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[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.

[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).

III. Effect of Proposed Changes:

Beginning January 1, 2019, the bill directs the DOR to reduce the RA tax rate of each employer with an initial or variable rate below 5.4 percent by .01 percent each year, so long as the balance of the UC Trust Fund does not require a positive adjustment factor.

The bill also provides that an employer whose tax rate falls below 1 percent, based on the .01 percent adjustment, will be allowed to pay less than the minimum tax rate of 0.1 percent.

The bill takes effect if SB 1122 or similar legislation is enacted.

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:

None.

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

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 reduces the RA tax rate for employers currently paying less than 5.4 percent, which will likely decrease the payroll tax burden incurred per employee.

B. Private Sector Impact:

Employers that are currently taxed at a rate of less than 5.4 percent will likely see a reduction in the cost of RA taxes per employee.

C. Government Sector Impact:

The DOR estimates that the cost of administrating the bill will be approximately $9,300 to modify the existing tax collection system.[39]

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

VI. Technical Deficiencies:

Line 219 of the bill should be amended to reflect that the bill takes effect on the same date that SB 1122 or similar legislation takes effect.

VII. Related Issues:

The enactment of this bill is contingent on the enactment of SB 1122 or similar legislation.

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 annual 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 will approve the tax fee structure provided by the bill and whether the USDOL would be able to do so by the effective date of this bill.

VIII. Statutes Affected:

This bill substantially amends section 443.131 of the Florida Statutes.

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[39] DOR, 2018 Agency Legislative Bill Analysis, *SB 1124* (Dec. 18, 2017) (on file with the Commerce and Tourism Committee).

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.