

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 1133 Emergency Management

**SPONSOR(S):** Economic Affairs Committee; Finance & Tax Committee and Economic Development & Tourism Subcommittee; Young

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N, As CS	White	Duncan
2) Finance & Tax Committee	12 Y, 0 N, As CS	Pewitt	Langston
3) Economic Affairs Committee	13 Y, 0 N, As CS	White	Pitts

### SUMMARY ANALYSIS

The bill provides that out-of-state businesses are not considered to have established a level of presence that would require a business to register, file, and remit state or local taxes or fees, or be subject to any registration, licensing, or filing requirements, when the out-of-state businesses are:

- conducting operations within the state solely to perform disaster-related work or emergency-related work during a disaster-response period, or
- in the state pursuant to a mutual aid agreement.

The bill defines terms, and lists specific taxes for which these out-of-state businesses are not subject to registration, filing or remittance requirements:

- Reemployment assistance taxes;
- State or local professional or occupational licensing requirements or related fees;
- Local business taxes;
- Taxes on the operation of commercial motor vehicles;
- Corporate income tax; and
- Tangible personal property tax and use tax on equipment the out-of-state business brings into the state, uses for disaster-related or emergency-related work during the disaster-response period, and then removes.

The bill provides that an out-of-state business or out-of-state employee remaining in the state after the disaster-response period is not entitled to the privileges provided in this act and is subject to the state's normal standards for establishing presence or residency or doing business in the state.

On February 5, 2016 the Revenue Estimating Conference determined the bill has no recurring state or local revenue impact, but may have a negative indeterminate impact in any given year, depending in part on the occurrence and severity of declared states of emergency.

The bill provides that the act is effective upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### **Declaration of a State Emergency**

The process for declaring a state of emergency is as follows:<sup>1</sup>

- The public is alerted to and/or warned of an imminent or actual event.
- The Division of Emergency Management (DEM) initiates response plans of the Comprehensive Emergency Management Plan (CEMP) to manage the emergency or disaster.
- A county declares a local state of emergency.
- The Director of DEM determines that a state of emergency is required, and recommends that the Governor declare a state of emergency.
- Through executive order or proclamation, the Governor declares a state of emergency.<sup>2</sup> The Governor may then direct or delegate operational control over any or all parts of the emergency management functions within the state. The Governor may additionally use all resources of the state government, and of each political subdivision of the state, which are necessary to manage the emergency.<sup>3</sup>

A declared State of Emergency is limited to 60 days, unless renewed by the Governor or terminated by the Legislature.<sup>4</sup>

##### **Stabilization of Disaster-Related Impacts for Businesses**

All state agencies and volunteer organizations, that comprise the State Emergency Response Team (SERT), are grouped into 18 Emergency Support Functions (ESFs).<sup>5</sup> ESF #18 is the unit that consolidates multiple agencies that perform functions that ensure business, industry, and economic stabilization.<sup>6</sup> ESF 18 is tasked with identification and solicitation of resources to meet identified needs, and also supports SERT efforts by facilitating and coordinating intermediate and long term economic impact statements.<sup>7</sup>

##### **Taxes**

###### **Reemployment Assistance Taxes**

The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.<sup>8</sup> The program is administered as a partnership of the federal government and the states.<sup>9</sup> In general, states are permitted to set eligibility conditions for

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<sup>1</sup> Florida Division of Emergency Management (DEM), Comprehensive Emergency Management Plan, p. 28, available at: <http://floridadisaster.org/cemp.htm>.

<sup>2</sup> Section 252.36(2) F.S.

<sup>3</sup> Section 252.36(5) F.S.

<sup>4</sup> Section 252.36(2) F.S.

<sup>5</sup> DEM, Emergency Support Functions, available at: <http://www.floridadisaster.org/emtools/esf.htm> ; DEM, Comprehensive Emergency Management Plan, pg. 40-41, available at: <http://floridadisaster.org/cemp.htm> (Last visited Jan. 27, 2016.)

<sup>6</sup> DEM, Comprehensive Emergency Management Plan Appendix XVIII, available at: [http://floridadisaster.org/documents/CEMP/2014/2014%20Finalized%20ESFs/2014%20ESF%2018%20Appendix\\_finalized.pdf](http://floridadisaster.org/documents/CEMP/2014/2014%20Finalized%20ESFs/2014%20ESF%2018%20Appendix_finalized.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> United States Department of Labor, Employment and Training Administration, State Unemployment Insurance Benefits, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (Last visited Jan. 26, 2016.).

<sup>9</sup> There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia. Social Security Office of Retirement and Disability Policy, Annual Statistical Supplement, available at <https://www.ssa.gov/policy/docs/statcomps/supplement/2014/unemployment.html> (Last visited Jan., 26, 2016.).

benefit recipients, the amount and duration of benefits, and the state tax structure, so long as state provisions are not in conflict with FUTA or the Social Security Act.<sup>10</sup>

Florida's Reemployment Assistance (RA) Program is funded solely by employers who pay quarterly state reemployment taxes provided in ch. 443, F.S., and annual payroll taxes under the Federal Unemployment Tax Act (FUTA).<sup>11</sup> State reemployment taxes are deposited into the Unemployment Compensation Trust Fund (UC Trust Fund), which are then used to pay reemployment benefits at no cost to eligible workers. Taxes collected from employers pursuant to FUTA fund the administrative costs of the RA Program. A portion of these funds is also used to finance the federal share of the Extended Benefits program, which is available during periods of high unemployment.

### Program Administration

Florida's unemployment insurance program was created by the Legislature in 1937,<sup>12</sup> and rebranded as the "reemployment assistance" program in 2012.<sup>13</sup> The Department of Economic Opportunity (DEO) is the agency responsible for administering the RA program.<sup>14</sup> DEO contracts with the Department of Revenue (DOR) to provide reemployment tax collection services.<sup>15</sup> The United States Department of Labor (USDOL) provides DEO with administrative resource grants from the taxes collected from employers pursuant to FUTA. These funds finance the processing of claims by DEO, state reemployment tax collections performed by DOR, appeals conducted by DEO and the Unemployment Appeals Commission, and related administrative functions.

### Tax Structure

Through the FUTA, the IRS levies an unemployment tax of 6.0% on employers.<sup>16</sup> This tax is applied to a taxable wage base of \$7,000 per employee. Federal law provides employers up to a 5.4% credit against that tax.<sup>17</sup> If a state has outstanding loan balances on January 1 for two consecutive years, and does not repay the full amount of its loans by November 10 of the second year, the FUTA credit rate for employers in that state will be reduced until the loan is repaid. Due to having outstanding federal advances for more than two years, Florida had its FUTA tax credit reduced by 0.3% for the 2011 calendar year, and 0.6% for the 2012 calendar year.<sup>18</sup>

In addition to FUTA, Florida employers pay a state reemployment tax which funds the UC Trust Fund, an account used to pay weekly benefits. Currently, employers pay quarterly state reemployment taxes on the first \$7,000 of each employee's annual wages.<sup>19</sup> An employer's initial state tax rate is 2.7 percent.<sup>20</sup> After an employer is subject to benefit charges for 8-calendar quarters, the standard tax rate is 5.4 percent, but may be adjusted down to a low of 1.0 percent.<sup>21</sup> The adjustment in the tax rate is determined by calculating a statutory formula that incorporates an employer's experience rating,<sup>22</sup> size of the UC Trust Fund, and other socialized costs.

### **State or Local Professional or Occupational Licenses**

The Florida Department of Business and Professional Regulation (DBPR) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.<sup>23</sup> The DBPR is the agency charged with licensing and regulating various businesses and professionals in

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<sup>10</sup> Title III, Title IX, and Title XII of the Social Security Act.

<sup>11</sup> Federal Unemployment Tax Act is codified at 26 U.S.C. 3301-3311.

<sup>12</sup> Chapter 18402, L.O.F.

<sup>13</sup> Chapter 2012-30, L.O.F.

<sup>14</sup> Sections 20.60(5)(c)(3) and 443.171, F.S.

<sup>15</sup> Section 443.1316, F.S.

<sup>16</sup> IRS, FUTA Credit Reduction, available at <https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/FUTA-Credit-Reduction> (Last visited Jan. 28, 2016.).

<sup>17</sup> *Id.*

<sup>18</sup> For Florida, there have been no FUTA credit reductions due to outstanding federal advances, since 2012. US DOL, Historical FUTA Credit Reductions, available at <http://workforcsecurity.doleta.gov/unemploy/finance.asp> (Last visited Jan. 28, 2016.).

<sup>19</sup> Section 443.1217(2), F.S.

<sup>20</sup> Section 443.131(2)(a), F.S.

<sup>21</sup> Section 443.131(2)(b), F.S.

<sup>22</sup> Section 443.131(3)(b), F.S.

<sup>23</sup> Chapter 93-220, L.O.F.

the state, including but not limited to, electrical contractors, the construction industry, building code administrators and inspectors, cosmetologists, veterinarians, real estate agents and pari-mutuel wagering facilities.<sup>24</sup> Section 455.213, F.S., provides the general provisions for issuance of professional licensure by the DBPR.

There are 22 professions regulated by DBPR. Cumulatively, there are more than 450 fees associated with the regulation of these professions. The fees range from five dollars to \$2,500.<sup>25</sup>

### **Local Business Taxes**

The local business tax represents the taxes charged and the method by which a local government grants the privilege of engaging in or managing any business, profession, and occupation within its jurisdiction. Counties and municipalities may levy a business tax, and the tax proceeds are considered general revenue for the local government. This tax does not refer to any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.<sup>26</sup>

State law does not prohibit a county or municipality from decreasing or repealing any authorized local business tax, and a county or municipal governing body may adopt an ordinance by majority vote that repeals a local business tax or establishes new rates that decrease local business taxes and do not result in an increase in local business taxes for a taxpayer.<sup>27</sup> State law exempts, or allows local governments to exempt, certain individuals from all or some portion of local business taxes.<sup>28</sup> State law also regulates the issuance of local business tax receipts to certain individuals or businesses.

State law provides that if any person engaging in or managing a business, profession, or occupation regulated by the DBPR has paid a business tax for the current year to the county or municipality in the state where the person's permanent business location or branch is maintained, no other local governing authority may levy a business tax, or any registration or regulatory fee equivalent to the business tax, on the person for performing work or services on a temporary or transitory basis in another county or municipality.<sup>29</sup> For the purposes of the Local Business Tax Act, work or services performed in a place other than the county or municipality where the permanent business location or branch office is maintained may not be construed as creating a separate business location or branch office of that person.<sup>30</sup>

### **Taxes on the Operation of Commercial Motor Vehicles**

The Department of Highway Safety and Motor Vehicles (HSMV) administers rules related to the taxes levied for the privilege of operating a commercial motor vehicle on public highways in Florida. Section 207.002, F.S., defines a "Commercial motor vehicle" as any vehicle not owned or operated by a governmental entity, using diesel or motor fuel on public highways, and weighing over 26,000 pounds. The taxes due are those motor and diesel fuel taxes found in parts I, II, and IV of Ch. 206, F.S. Penalties<sup>31</sup> with interest<sup>32</sup> exist for delinquent taxes, as well as the possibility of suspension of registration and punishments for third degree felony if a fraudulent report is filed.<sup>33</sup>

The Division of Motor Vehicles (DMV) within HSMV ensures commercial carriers are properly registered and pay the appropriate gasoline tax for intrastate and interstate commerce. The Office of

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<sup>24</sup> Department of Business and Professional Regulation, available at: <http://www.myfloridalicense.com/dbpr/index.html> (Last visited January 28, 2016.).

<sup>25</sup> Florida Estimating Conference, 2016 Florida Tax Handbook, p. 148, available at: <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2016.pdf>.

<sup>26</sup> Florida Legislature, Office of Economic and Demographic Research, 2015 Local Government Financial Information Handbook, December 2015, p. 148, available at <http://edr.state.fl.us/Content/local-government/reports/index.cfm#local-government> (Last visited Jan. 28, 2016.).

<sup>27</sup> Section s. 205.0535(5), F.S.

<sup>28</sup> See ch. 205, F.S., relating to local business taxes.

<sup>29</sup> Section 205.065, F.S.

<sup>30</sup> *Id.*

<sup>31</sup> Sections 207.007(1), 207.012, 207.013, and 207.014, F.S.

<sup>32</sup> Section 207.007(2), F.S.

<sup>33</sup> Section 207.007(3), F.S.

Motor Carrier Size and Weight within the HSMV is staffed by regulatory weight inspectors that perform commercial vehicle safety and weight enforcement. These inspectors weigh trucks and check registration and fuel tax compliance at 20 fixed-scale locations along major highways, and statewide by using portable scales. Over 20 million vehicles are weighed annually.<sup>34</sup>

## Corporate Income Taxes

Florida levies a corporate income tax on corporations at 5.5 percent of income earned in Florida.<sup>35</sup> The calculation of Florida corporate income tax starts with a corporation's federal taxable income.<sup>36</sup> After certain addbacks and subtractions to federal taxable income, as required by chapter 220, F.S., the amount of adjusted federal income attributable to Florida is determined by the application of an apportionment formula.<sup>37</sup> The Florida corporate income tax uses a three-factor apportionment formula consisting of property – 25%, payroll -25%, and sales – 50% (which is double-weighted) to measure the portion of a multistate corporation's business activities attributable to Florida.<sup>38</sup> Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first \$50,000 of net income is exempt.<sup>39</sup>

## Tangible Personal Property

“Tangible Personal Property” means all goods, chattels, and other articles of value (excluding some vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself. Inventory and household goods are excluded.<sup>40</sup>

In Florida property taxes (i.e., “ad valorem taxes”) are levied by local governments on real and tangible personal property. In order for tangible personal property to be subject to ad valorem tax in a given year it must have been present in the state for at least one month as of January 1 of the tax year.

Florida's sales and use tax is a six percent levy on retail sales of most tangible personal property, admissions, transient lodgings, commercial rentals, and motor vehicles.<sup>41</sup> There are currently more than 250 different exemptions, exclusions, deductions, and credits from sales and use tax.<sup>42</sup> Sales tax is added to the price of taxable goods or services and the tax is collected from the purchaser at the time of sale. If tangible personal property is imported to Florida for use in Florida it may, under some circumstances, be subject to a “use tax” at the same rate as the sales tax.

## Effect of Proposed Changes

### Definitions

The bill defines the following terms as follows:

- “Emergency-related work” means repairing, renovating, installing, building, rendering services, or other business activities that relate to infrastructure that has been damaged, impaired, or destroyed by an event that has resulted in a declaration of a state of emergency, or in anticipation of a disaster or emergency.
- “Disaster-response period” means:
  - A period that begins 10 calendar days before the first day of a declared state of emergency and ends on the 60th calendar day after the end of the declared state of emergency; or

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<sup>34</sup> FDOT, Motor Carrier Size and Weight, available at <http://www.dot.state.fl.us/statemaintenanceoffice/motorcarrier.shtml> (Last visited Jan. 28, 2016).

<sup>35</sup> s. 220.11, F.S.

<sup>36</sup> s. 220.12, F.S.

<sup>37</sup> See s. 220.15, F.S.

<sup>38</sup> s. 220.15, F.S. See Florida Revenue Estimating Conference, 2016 Florida Tax Handbook, p. 62, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2016.pdf>.

<sup>39</sup> Section 220.14, F.S.

<sup>40</sup> Section 192.001(11)(d), F.S.

<sup>41</sup> See ch. 212, F.S.

<sup>42</sup> *Supra* note 25 at 164-167.

- A period that begins on the date that an out-of-state business enters this state in good faith under a mutual aid agreement and in anticipation of a disaster or emergency, regardless of whether a state of emergency is declared, and ends on the date that the work is concluded, or 7 calendar days after the out-of- state business enters this state, whichever occurs first.
- “Infrastructure” means public roads; public bridges; property and equipment owned or used by communication networks, electric generating systems, electric transmission and distribution systems, gas distribution systems, or water pipelines; and related support facilities.
- “Mutual aid agreement” means an agreement to which two or more business entities are parties and under which a public utility, municipally owned utility, electric cooperative, natural gas special district, natural gas transmission pipeline, or joint agency owning, operating, or owning and operating infrastructure used for electric or gas generation, transmission, or distribution in this state may request that an out-of-state business perform work in this state in anticipation of a disaster or an emergency.
- "Out-of-state business" means a business entity that:
  - Does not have a presence in this state, except with respect to the performance of emergency-related work, and conducts no business in this state, and whose services are requested by a registered business or by a unit of state or local government for purposes of performing emergency-related work in this state; and
  - Is not registered and does not have tax filings or presence sufficient to require the collection or payment of a tax in this state in the tax year before the disaster-response period.

The term also includes a business entity that is affiliated with a registered business solely through common ownership.
- “Out-of-state employee” means an employee who does not work in this state, except for emergency-related work on infrastructure during a disaster-response period.
- "Registered business" means a business entity that is registered to do business in this state before the disaster-response period begins.

#### Insufficient level of presence for Out-of-State Businesses and Employees

The bill provides that an out-of-state business conducting operations within the state solely to perform emergency-related work during a disaster-response period or pursuant to a mutual aid agreement is not considered to have established a level of presence that would require that business to register, file, and remit state or local taxes or fees or require that business to be subject to any registration, licensing, or filing requirements in this state.

The bill further provides that for purposes of any state or local tax on or measured, in whole or in part, by net or gross income or receipts, the activity of the out-of-state business conducted in this state during the disaster-response period must be disregarded with respect to any filing requirements for such tax, including the filing required for a consolidated group of which the out-of-state business is a subsidiary.

The bill lists specific taxes that the above provisions apply to:

- Reemployment assistance taxes.
- State or local professional or occupational licensing requirements or related fees.
- Local business taxes.
- Taxes on the operation of commercial motor vehicles.
- Corporate income tax.
- Tangible personal property tax and use tax on equipment that is brought into the state by the out-of-state business, used by the out-of-state business only to perform emergency-related

work during the disaster-response period, and removed from the state by the out-of-state business following the disaster-response period.

An out-of-state employee whose only employment in this state is for the performance of emergency-related work during a disaster-response period is not required to comply with state or local occupational licensing requirements or related fees.

#### Obligations after Disaster-Response Period

An out-of-state employee or out-of-state business that remains in the state after the disaster-response period is not entitled to the aforementioned procedures for any activities performed after the disaster-response period ends, and is subject to the state's normal standards for establishing presence or residency or doing business in the state.

The bill provides that it is effective upon becoming law.

#### B. SECTION DIRECTORY:

Section 1: Amends s. 213.055, F.S., to facilitate out-of-state response to disasters and emergencies.

Section 2: Provides that the bill is effective upon becoming law.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

On February 5, 2016 the Revenue Estimating Conference determined the bill has no recurring state revenue impact, but may have a negative indeterminate impact in any given year, depending in part on the occurrence and severity of declared states of emergency.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

On February 5, 2016 the Revenue Estimating Conference determined the bill has no recurring local revenue impact, but may have a negative indeterminate impact in any given year, depending in part on the occurrence and severity of declared states of emergency.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that out-of-state businesses respond to emergencies in Florida and are exempt from paying the enumerated taxes during declared state emergencies, these businesses may operate at lower costs. If, as a result of the bill, out-of-state businesses can respond to Florida emergencies faster, then the private sector may resume normal operations faster than they would have been able to otherwise.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The county/municipal mandates provision of Art. VII, section 18 of the Florida Constitution may apply because the bill may result in occasional reductions in authority to raise certain revenue through the local business tax and ad valorem tax on tangible personal property. However, an exemption may apply because the frequency of the reductions is unknown and likely insignificant.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Economic Development & Tourism Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Relocates the bill language from ch. 252, F.S., relating emergency management, to ch. 213, F.S., relating to state revenue laws.
- Replaces the term “disaster-related work,” with “emergency-related work.”
- Removes the provisions requiring notification to the Division of Emergency Management.
- Removes a provision providing that, during a disaster-response period, out-of-state employees and out-of-state businesses performing disaster-related or emergency-related work are still subject to motor and other fuel taxes imposed pursuant to ch. 206, F.S, and sales and use taxes imposed pursuant to ch. 212, F.S.

On February 9, 2016, the Finance & Tax Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment added the word “electric” before the phrase “transmission and distribution systems” in the definition of infrastructure.

On February 18, 2016, the Economic Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Specifies that a “mutual aid agreement” is an agreement entered into by two or more business entities, which may include electric and gas transmission and distribution entities;
- Removes a provision that may have exempted out-of-state employees temporarily in the state from registering, filing, and remitting state or local taxes; and
- Makes technical and conforming changes.

This analysis has been updated to reflect the amendments.