

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 643 Sales Tax Refund for Certified Job Training Organizations  
**SPONSOR(S):** Trumbull  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1098

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Workforce Development & Tourism Subcommittee	14 Y, 0 N	Willson	Cooper
2) Ways & Means Committee			
3) Commerce Committee			

### SUMMARY ANALYSIS

Charitable organizations are eligible to receive tax-deductible contributions. To qualify as a charitable organization under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for an exempt purpose, none of its earnings may inure to any private shareholder or individual, and it cannot be an action organization. Some charitable organizations receive donated goods, sell the goods to the public, and use the sale proceeds to provide of job training and employment services.

The bill creates s. 212.0991, F.S., relating to sales tax refunds for certain certified job training organizations.

The bill defines a "certified job training organization" as an organization that:

- Is exempt under s. 501(c)(3) of the Internal Revenue Code of 1986;
- Provides job training and employment services to low-income persons, individuals who have workplace disadvantages, or individuals with barriers to employment;
- Is accredited by the Commission on Accreditation of Rehabilitation Facilities; and
- Is certified by the Department of Economic Opportunity (DEO) to meet the requirements of this bill.

The bill defines "job training and employment services" as programs and services that are provided to improve job readiness, assist workers in gaining employment and adapting to the changing labor market, and achieve worker success through self-sufficiency.

The bill provides that a certified job training organization may receive up to a 10 percent refund on the sales tax remitted to the Department of Revenue in the prior state fiscal year on its sales of goods donated to the business. The bill specifies that the refunds are granted on a first-come, first-served basis and limits the total refund to no more than \$2 million per state fiscal year.

The bill specifies that the refund must be used towards:

- Growth in employment hours;
- Job training and employment services to low-income persons, individuals who have workplace disadvantages, and individuals with barriers to employment; or
- Job training and employment services for veterans.

The bill provides for DEO to administer the application, approval, issuance, verification, and termination process relating to sales tax refund certifications. Certified job training organizations must submit an annual report to DEO containing certain information, including an accounting of how the refund was used.

The bill may have an impact on state revenues of up to -\$2 million each year. The bill appears to have no significant impact on state government expenditures or local government revenues or expenditures.

The bill provides an effective date of July 1, 2019.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0643a.WTS

**DATE:** 3/13/2019

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Charitable Organizations

Charitable organizations are eligible to receive tax-deductible contributions.<sup>1</sup> To qualify as a charitable organization under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for an exempt purpose<sup>2</sup>, none of its earnings may inure to any private shareholder or individual,<sup>3</sup> and it cannot be an action organization.<sup>4</sup>

Additionally, organizations that qualify under section 501(c)(3) are eligible for other tax benefits, such as state and federal sales, property, and income tax exemptions.<sup>5</sup>

Many charitable organizations, such as regional Goodwill Industries<sup>6</sup> located throughout the state, receive donated goods, sell the goods to the public, and use the sale proceeds towards the provision of job training and employment services to low-income persons, individuals who have workplace disadvantages, individuals with barriers to employment, and veterans.

##### 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.

DEO serves as Florida's lead workforce agency<sup>7</sup> and is responsible for the fiscal and administrative affairs of the workforce development system and a large number of state and federal Workforce

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<sup>1</sup> 26 U.S.C. § 170.

<sup>2</sup> Exempt purposes under section 501(c)(3) include: charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

<sup>3</sup> IRS, *Exemption Requirements - 501(c)(3) Organizations*, <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501c3-organizations> (last visited March 9, 2019).

<sup>4</sup> i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.

<sup>5</sup> See IRS, *Federal Tax Obligations of Non-Profit Corporations* <https://www.irs.gov/pub/irs-pdf/n844.pdf> (last visited March 9, 2019); See FL Department of Revenue, *Nonprofit Organizations*, <http://floridarevenue.com/taxes/businesses/Pages/nonprofit.aspx>. (last visited March 9, 2019). Nonprofit organizations may qualify for exemption from some Florida taxes. Each tax is separate and distinct and has its own requirements. As a result, exemption from one tax does not necessarily exempt the organization from all taxes and not all Florida tax exemptions require the organization obtain a federal tax-exempt status.

<sup>6</sup> See Goodwill Florida Association, <https://www.floridagoodwills.org/> (last visited March 9, 2019). The Florida Goodwill Association is a 501(c)(4), not-for-profit organization, comprised of nine autonomous Goodwill Agencies, each serving the people of a multi-county region. According to their website, the organizations share a common mission to help Floridians overcome barriers to employment and become self-sufficient.

See also Goodwill Industries-Big Bend, Inc. <http://www.goodwillbigbend.org/faq/> Goodwill Industries-Big Bend, Inc. is a registered 501(c)3 non-profit. Their website states that 87 cents of every dollar made goes to fund their mission, and these purchases help fund a wide variety of career training and placement programs that serve those with disabilities and other barriers to employment. This includes veterans, ex-offenders, those with limited education or work experience, at risk youth, homeless individuals, and others who are at-risk or in need.

<sup>7</sup> Primarily through its Division of Workforce Services. See s. 20.60, F.S.

Programs<sup>8</sup> and Reemployment Assistance Programs.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> The DEO and CareerSource Florida deliver Florida's workforce development services through the LWDBs and nearly 100 one-stop career centers.<sup>12</sup> One-stop career service centers provide Floridians local access to available workforce services, including job placement, career counseling, and skills training.<sup>13</sup>

## Sales Tax

Florida's sales and use tax is a six percent levy on retail sales of a wide array of tangible personal property, admissions, transient lodgings, and commercial real estate rentals, unless expressly exempted. In addition, Florida authorizes several local option sales taxes that are levied at the county level on transactions that are subject to the state sales tax. Generally, the sales tax is added to the price of a taxable good and collected from the purchaser at the time of sale. Sales tax represents the majority of Florida's general revenue stream (77 percent for FY 2017-18) and is administered by the Department of Revenue (DOR) under chapter 212, F.S.

DOR routinely audits businesses in this state to determine if state taxes were collected, reported, and paid correctly. An audit may extend back three years.<sup>14</sup>

## Qualified Job Training Organizations Program

Section 288.1097, F.S., allows a "qualified job training organization" to receive grant funding from DEO.

To be eligible, a job training organization must:

- Be exempt under s. 501(c)(3) or (4) of the Internal Revenue Code;
- Provide job training and employment services to individuals who have workplace disadvantages or disabilities;
- Be accredited by the Commission on Accreditation of Rehabilitation Facilities;
- Collect Florida sales tax;
- Specialize in the retail sale of donated items;
- Operate statewide through more than 100 locations;
- Use a majority of its revenues for job training and placement programs that create jobs and foster economic development; and
- Be certified by the DEO that the organization meets the requirements described above.

DEO is permitted to release funds to the organization pursuant to a contract with the organization. The contract must require the organization to meet certain performance conditions in order to receive the grant funds. The performance conditions must include "net new employment in the state, the

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<sup>8</sup> See <http://www.floridajobs.org/office-directory/division-of-workforce-services/workforce-programs> (last visited March 9, 2019).

<sup>9</sup> See <http://www.floridajobs.org/office-directory/division-of-workforce-services/reemployment-assistance-programs> (last visited March 9, 2019); Section 445.009(3)(c), F.S.

<sup>10</sup> See s. 445.004, F.S.

<sup>11</sup> 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.

<sup>12</sup> Florida Department of Economic Opportunity, *CareerSource Florida Center Directory*, <http://www.floridajobs.org/onestop/onestopdir/> (last visited March 9, 2019).

<sup>13</sup> See s. 445.009, F.S.

<sup>14</sup> S. 95.091, F.S., Limitation on actions to collect taxes. Specifically, s. 95.091(3)(a)6.b., F.S., provides that "the Department of Revenue may determine and assess the amount of any tax, penalty, or interest due under any tax enumerated in s. 72.011 which it has authority to administer . . . In any case in which a refund of tax has erroneously been made for any reason . . . For refunds made on or after July 1, 1999, within 3 years after making such refund, or at any time after making such refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact."

methodology for validating performance, the schedule of payments, and sanctions for failure to meet the performance requirements including any provisions for repayment...” and that salaries paid to officers and employees of the organization meet certain Internal Revenue Code requirements.<sup>15</sup>

The organization must use the grant funds “solely to encourage and provide economic development through capital construction, improvements, or the purchase of equipment that will result in expanded employment opportunities.” The statute also requires the following results to be met within a 10-year period:

- Creation of at least 5,000 direct, new jobs;
- Minimum of 23,000 new clients served;
- Production of a minimum of \$24 million in new sales tax revenues from increased sales;
- Minimum of \$42 million in new salaries; and
- Minimum of \$6 million for job placement services.

No funds have ever been appropriated to this program.

### **Effect of the Bill**

The bill creates s. 212.0991, F.S., relating to sales tax refunds for certain certified job training organizations.

### *Definitions*

The bill defines a “certified job training organization” as an organization that:

- Is exempt under s. 501(c)(3) of the Internal Revenue Code of 1986;
- Provides job training and employment services to low-income persons,<sup>16</sup> individuals who have workplace disadvantages, or individuals with barriers to employment;
- Is accredited by the Commission on Accreditation of Rehabilitation Facilities<sup>17</sup>; and
- Is certified by DEO to meet the requirements of this bill.

Additionally, the bill provides that a certified job training organization comprised of commonly owned and controlled entities is deemed to be a single entity.

The bill defines “growth in employment hours” as the annual growth in the number of hours worked by employees in the current year compared with the number of hours worked by employees in the previous year.

The bill defines “job training and employment services” as programs and services that are provided to improve job readiness, assist workers in gaining employment and adapting to the changing labor market, and achieve worker success through self-sufficiency.

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<sup>15</sup> S. 288.1097(2), F.S.

<sup>16</sup> S. 420.0004(11), F.S., defines low-income persons as “one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.”

<sup>17</sup> CARF, About Us, <http://www.carf.org/About/> (last visited March 9, 2019). The Commission on Accreditation of Rehabilitation Facilities (CARF) is an international, independent, nonprofit accreditor of health and human services. Through accreditation, CARF assists service providers in improving the quality of their services, demonstrating value, and meeting internationally recognized organizational and program standards. The accreditation process applies sets of standards to service areas and business practices during an on-site survey. Accreditation, however, is an ongoing process, signaling to the public that a service provider is committed to continuously improving services, encouraging feedback, and serving the community. Accreditation also demonstrates a provider's commitment to enhance its performance, manage its risk, and distinguish its service delivery.

## *Application and Use*

The bill provides that a certified job training organization may receive up to a 10 percent refund on the sales tax remitted to DOR in the prior state fiscal year on its sales of goods donated to the business.

The bill specifies that the refund must be used towards:

- Growth in employment hours;
- Job training and employment services to low-income persons, individuals who have workplace disadvantages, and individuals with barriers to employment; or
- Job training and employment services for veterans.

The bill specifies that the refunds are granted on a first-come, first-served basis and limits the refund to a total of no more than \$2 million per state fiscal year.

DEO administers the application, approval, issuance, verification, and termination process relating to sales tax refund certifications. Upon approval, DEO transmits a copy of the decision to DOR. Certified organizations must apply to DOR in August of each year to receive a refund, and must provide a copy of their certification in the first refund application to DOR. Certifications remain in effect as long as the organization remains in compliance. DEO is required to notify DOR immediately if it determines that an organization no longer qualifies for the refund.

Certified job training organizations must provide DEO with an annual report that includes the following information:

- The amount of the refund used to create growth in employment hours.
- The total annual growth in employment hours.
- The amount of the refund used for job training and employment services.
- The number of individuals who participated in job training and employment services at the organization for the fiscal year in which the requested funds were remitted to DOR.
- A statement declaring that the organization continues to meet the requirements of this section.

The bill provides rulemaking authority to DEO to administer the section.

The bill provides that, notwithstanding s. 95.091(3)(a)6.b., F.S., DOR may audit any refund within 4 years after the date of which a refund is granted. Refunds that are overpaid or issued to ineligible organizations are subject to repayment and interest at the rate calculated pursuant to s. 213.235, F.S.

## **B. SECTION DIRECTORY:**

**Section 1** Creates s. 212.0991, F.S.; providing definitions; authorizing certified organizations to receive refunds of certain sales taxes collected if such amount is used for job training and employment services; specifying the annual maximum allowable tax refund for such organizations; providing requirements for receiving the refund; authorizing the DEO to certify organizations; authorizing the DOR to audit, within a certain timeframe, any refund issued; providing the applicable interest rate on overpayments and payments to ineligible organizations; providing that a job training organization comprised of commonly owned and controlled entities is a single organization; requiring certified organizations to provide an annual report to the DEO.

**Section 2** Provides an effective date of July 1, 2019.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill will have a negative impact on state revenues in an amount of up to \$2 million each year.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

The bill may have a positive impact on organizations that qualify for the sales tax refund certification and receive a refund on up to 10 percent of the sales tax remitted in the prior state fiscal year.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

Not applicable. This bill does not appear to affect county or municipal governments.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill authorizes DEO to adopt rules to administer this section, including rules for the approval and disapproval of applications by organizations.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES