HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1253 Employer Contributions
SPONSOR(S): McClure
TIED BILLS: **IDEN./SIM. BILLS:** SB 1356

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Workforce Development & Tourism Subcommittee	13 Y, 0 N	Willson	Barry
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

Florida's reemployment assistance program offers temporary, partial wage replacement to qualified individuals who lose their jobs through no fault of their own. Employers fund the state's reemployment assistance program through taxes on their businesses. Tax rates are impacted by the employment record of the individual business and amount of money available in the fund, among other factors.

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

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 Trust Fund, and other adjustment factors. The variable rates range from 5.4% to the minimum allowable tax rate, which varies annually but can never be less than 0.1%.

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

The bill reduces the initial rate for unemployment contributions, from 2.7% to 1.0%, for tax rates effective on or after January 1, 2021, so long as the balance in the Unemployment Compensation Trust Fund does not require the computation of a positive adjustment factor for that year.

See *Fiscal Analysis* section for an estimate of the fiscal impact of the bill.

The bill has an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Reemployment Assistance Program

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. 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.[1]

The Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA),[2] used to provide grants to the states to fund costs associated with program administration and job service programs.[3] 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 (Trust Fund), an account used to pay unemployment compensation benefits.

Florida's unemployment insurance program was created by the Legislature in 1937,[4] and was rebranded as the "Reemployment Assistance Program" in 2012.[5] The Department of Economic Opportunity (DEO) is responsible for administering the program and determining the calculation and payment of reemployment assistance (RA) benefits to eligible claimants. The Reemployment Assistance Program supports reemployment services through local One-Stop Career Centers located throughout the state. Department of Revenue (DOR) provides tax collection services on behalf of DEO and deposits the taxes into the state's Trust Fund.[6] The Trust Fund is used solely for the purpose of paying benefits to eligible claimants.[7]

State Reemployment Tax

Florida employers are required to pay the state reemployment tax as a cost of doing business. Workers do not pay any part of the Florida reemployment tax and employers must not make payroll deductions for this purpose. Employers with stable employment records receive credit in reduced tax rates after a qualifying period. 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. DOR reviews the reports and makes a determination of whether the business is liable to pay reemployment taxes.[8]

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

1 USDOL, Employment and Training Administration, *State Unemployment Insurance Benefits*, http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (last visited Jan. 28, 2020).

2 26 U.S.C. 3301-3311.

3 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. 29, 2020).

4 Ch. 18402, Laws of Fla.

5 Ch. 2012-30, Laws of Fla.

6 S. 443.1316, F.S.

7 Ss. 443.131 and 443.191, F.S.

8 DOR, *Employer Guide to Reemployment Tax, available at* http://floridarevenue.com/Forms_library/current/rt800002.pdf (last visited Jan. 29, 2020).

- 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.[9]

Florida law also specifies separate liability requirements for agricultural and domestic employers, nonprofit organizations, governmental agencies, and Indian tribes.[10] Businesses that are otherwise not subject to reemployment taxation may opt to voluntarily pay into the Trust Fund for coverage for their employees.[11]

An employer's contributions are equal to a percentage of its wages paid for employment.[12] The standard rate of contributions payable is 5.4%,[13] which is also the maximum allowable tax rate under current law.[14] New employers are liable to pay an initial contribution of 2.7%, which remains in effect until the employer has made contributions for at least eight consecutive quarters.[15]

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 Trust Fund, and other adjustment factors. The variable rates range from 5.4% to the minimum allowable tax rate, which varies annually but can never be less than 0.1%.[16]

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.[17] 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 reemployment tax rates is to stabilize the 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%.

Florida Unemployment Compensation Trust Fund

Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the 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.[18]

Under current law, a negative adjustment factor is required if the balance of the Trust Fund is greater than 5% of the taxable payrolls. A negative adjustment factor remains in effect until the balance of the Trust Fund is less than 5%, but more than 4%, of the total taxable payroll for the previous year.[19] A positive adjustment factor is required if the balance of the Trust Fund is less than 5% of the taxable

---

[9] S. 443.1215, F.S.
[10] *See generally* ch. 443, F.S.
[11] If an employer voluntarily provides coverage, the employer must report wages and pay reemployment taxes for a minimum of one calendar year. S. 443.121(3), F.S.
[12] Employers are required to pay taxes on the first $7,000 of each employee's wages. S. 443.1217(2), F.S.
[13] S. 443.131(2)(c), F.S.
[14] *See* s. 443.131(2)(e), F.S
[15] S. 443.131(2)(a), F.S.
[16] 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.
[17] 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 DOR.
[18] 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% to 4%, and reduced the trigger for the negative adjustment factor from 4.7% to 5%. 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.
[19] S. 443.131(3)(e), F.S.

payrolls. A positive adjustment factor remains in effect until the trust fund balance equals or exceeds 4% of the total taxable payroll for the previous year.[20] Florida's Unemployment Compensation Trust Fund held a balance greater than $4.08 billion at the close of the third quarter in 2019.[21]

Employee Leasing Companies

Employee Leasing Companies (ELC) are regulated by part XI of ch. 468, F.S., and the Board of Employee Leasing Companies under Florida Department of Business and Professional Regulation (DBPR). Generally, 'employee leasing' means an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client, with exceptions.

A newly licensed ELC has 30 days from the date of licensure by the Florida Department of Business and Professional Regulation (DBPR) to make an election with DOR to report and pay reemployment tax using the tax rate for each client. This is called the client method. The tax rate used will be based upon the wage and benefit history the client has earned under the ELC. If the client has no wage and benefit history under the ELC, the client will have the initial rate of 0.0270 (2.7%). A separate reemployment tax account number will be assigned by DOR under the Federal Employer Identification Number (FEIN) of the ELC for each client company.[22]

This one-time election by an ELC is binding on all current and future clients. A newly licensed ELC that does not timely notify DOR in writing of its election to use the client method must report all leased and internal employees under its own reemployment tax account number and tax rate.[23]

Effect of the Bill

The bill amends s. 443.1216(1)(a)2.a.(II)(C), F.S., reducing the initial rate at which an ELC must pay unemployment contributions for a client company under the client method, from 2.7% to 1.0%. The bill applies only to tax rates effective on or after January 1, 2021, so long as the balance in the Unemployment Compensation Trust Fund does not require the computation of a positive adjustment factor for that year.

The bill amends s. 443.131(2)(a), F.S., reducing the initial rate at which an employer must pay unemployment contributions from 2.7% to 1.0%. The bill applies only to tax rates effective on or after January 1, 2021, so long as the balance in the Unemployment Compensation Trust Fund does not require the computation of a positive adjustment factor for that year.

The bill provides for an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1 Amends s. 443.1216, F.S., reducing the initial rate that certain client companies of employee leasing companies must pay under specified circumstances.

Section 2 Amends s. 443.131, F.S.; requiring the tax collection service provider to adjust the initial employer contribution rate under certain circumstances.

Section 3 Provides for an effective date.

---

[20] S*ee* s. 443.131(3)(e), F.S.
[21] U.S. Dept. of Labor, *Financial Information by State for CYQ - 2019.3* https://oui.doleta.gov/unemploy/data_summary/SummaryTables.pdf (last visited Jan. 29, 2020).
[22] DOR, *Reemployment Tax for Professional Employer Organizations*, https://floridarevenue.com/taxes/taxesfees/Pages/rt_elc.aspx (last visited Jan. 29, 2020).
[23] *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See *Fiscal Comments*, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to DEO, a reduction of the initial tax rate from 2.7% to 1.0% would result in a total savings for new contributory employers of $66.3 million annually, or $119 per employee per year.[24]

D. FISCAL COMMENTS:

The Revenue Estimating Conference scored CS/SB 1356 on January 31, 2020,[25] and provided the following: Florida employers paid $498.2 million of Reemployment Assistance into the RA trust fund in FY 2018-19. Currently, due to the size of the trust fund, there are negative adjustment factors calculated to the rates employers pay. The Department of Revenue provided historical data for RA taxes paid by employers subject to the current 2.7% initial rate (with fewer than eight chargeable quarters). Based on the data, new employers (with fewer than eight chargeable quarters), subject to the 2.7% initial rate, paid $184.8 million in FY 2018-19. If these employers are charged the proposed 1% initial rate, they would have paid $68.9 million for the same period, a savings of $117 million to those employers. This amounts to 0.2% of taxable wages. There are approximately 150,000 employers that paid the 2.7% rate in FY 2018-19. As a result, RA tax collections and the trust fund balance would have decreased by that amount. Rates to all other employers (earned rate employers) would have remained the same in the first year. This will be the impact in the first year of implementation.

In future years, the decrease in the fund balance may feed through into the calculation of earned rates for employers and earned rates for the remaining employers may potentially increase, all else being equal.

---

[24] Email from J.P. Bell, Legislative and Cabinet Affairs Coordinator, Dept. of Economic Opportunity, DEO one pagers (Jan. 21, 2020).

[25] Revenue Estimating Impact Conference, *1/31/20 Revenue Impact Results*, pp. 337-340, http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/Impact0131.pdf (last visited Jan. 31, 2020).

Section 5: Consensus Estimate (Adopted: 01/31/2020): The Conference adopted the proposed impact with an adjustment for a feedback affect, reaching the full feedback affect impact in FY 2022-23.

	GR		Trust		Local/Other		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2020-21	0.0	0.0	(117.0)	(87.8)	0.0	0.0	(117.0)	(87.8)
2021-22	0.0	0.0	(96.4)	(87.8)	0.0	0.0	(96.4)	(87.8)
2022-23	0.0	0.0	(87.8)	(87.8)	0.0	0.0	(87.8)	(87.8)
2023-24	0.0	0.0	(87.8)	(87.8)	0.0	0.0	(87.8)	(87.8)
2024-25	0.0	0.0	(87.8)	(87.8)	0.0	0.0	(87.8)	(87.8)

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES