

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1017 Reemployment Assistance Fraud

**SPONSOR(S):** La Rosa

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		White	Duncan
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

HB 1017 creates the “Department of Economic Opportunity Cybercrime Prevention Act.” The bill authorizes the Department of Economic Opportunity (DEO) to employ law enforcement officers, whom must meet the existing requirements and certifications for Florida law enforcement officers. These law enforcement officers would be tasked with the statewide investigation, enforcement, and prosecution of violations of the Reemployment Assistance Program Law, as well as other related rules and state laws.

The bill permits the Florida Department of Highway Safety and Motor Vehicles to disclose to DEO, pursuant to an interagency agreement, images of licensees that it maintains, for the purpose of facilitating the validation of reemployment assistance claims by DEO and to assist DEO in the identification of fraudulent or false claims for benefits.

The bill modifies the disqualification period imposed on claimants who make false or fraudulent representations for the purpose of obtaining benefits. Instead of being disqualified from benefits for up to one year after DEO discovers the false or fraudulent representation, as the current law provides, a claimant found to have committed fraud would be disqualified from benefits for five years for a first act of fraud; 10 years for a second act of fraud; and for the lifetime of the claimant after the third act of fraud.

The bill authorizes DEO to recover overpayments through attachment and garnishment, in the same manner as a judgment of a court of competent jurisdiction. Following application to the clerk of court by DEO, a writ would be issued by the clerk, without bond on DEO. The bill provides that issues that are raised by attachment and garnishment for overpayments would be subject to court proceedings, pursuant to Chapters 76 and 77, F.S., with venue in Leon County.

The bill amends the definition of “racketeering activity,” as it relates to Florida’s Racketeer Influenced and Corrupt Organization Act, to include crimes that are chargeable as reemployment assistance fraud. Although current law includes the creation of fictitious employer schemes as “racketeering activity,” the bill would make each false statement or representation or failure to disclose a material fact a separate, prosecutable offense.

The bill provides that it takes effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### **Reemployment Assistance**

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>1</sup> The program is administered as a partnership of the federal government and the states.<sup>2</sup> States are permitted to set benefit eligibility requirements, the amount and duration of benefits and the state tax structure, as long as state law does not conflict with the Federal Unemployment Tax Act (FUTA) or the Social Security Act requirements.<sup>3</sup>

Florida's unemployment insurance program was created by the Legislature in 1937,<sup>4</sup> and rebranded as the "reemployment assistance" program in 2012.<sup>5</sup> The Florida Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance (RA) laws, primarily through its Division of Workforce Services (Division). The DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collection services.<sup>6</sup>

##### Collection of Taxes Associated with Reemployment Assistance

Individual states collect payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service (IRS) collects an annual federal payroll tax under FUTA.<sup>7</sup> FUTA collections go to the states for costs related to the administration of state unemployment insurance and job service programs. Additionally, FUTA 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.<sup>8</sup> The IRS charges each liable employer a federal unemployment tax of 6.0 percent.<sup>9</sup> If, however, a state program meets the federal requirements and has no delinquent federal loans, employers are eligible for up to a 5.4 percent tax credit, making the net tax rate 0.6 percent.<sup>10</sup>

In Florida, RA benefits are financed solely through contributions by employers.<sup>11</sup> The calculation for determining each employer's tax rate is statutorily set, and takes into consideration an employer's "experience," the balance of the Unemployment Compensation Trust Fund (UCTF), and other factors. The employer's experience rating is based on the employer's own employment records,<sup>12</sup> and serves to stabilize the UCTF, as well as ensure that all employers pay their fair share based on their own

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<sup>1</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>2</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).

<sup>3</sup> *Id.*

<sup>4</sup> Chapter 18402, L.O.F.

<sup>5</sup> Chapter 2012-30, L.O.F.

<sup>6</sup> Section 443.1316, F.S.

<sup>7</sup> FUTA is codified at 26 U.S.C. ss. 3301-3311.

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

<sup>9</sup> 26 U.S.C. s. 3301.

<sup>10</sup> *Supra* note 8.

<sup>11</sup> As of Jan. 2015, contributing employers pay taxes on the first \$7,000 of each employee's wages, instead of \$8,000. *See* s. 443.1217(2)(a), F.S. While most employers are "contributory employers," state and local governments are "reimbursing employers." As such, they pay into the UCTF on a dollar-for-dollar basis for benefits paid to former employees. *See* s. 443.1312, F.S.

<sup>12</sup> Florida DOR, "Employer Guide to Reemployment Tax," *available at* <http://dor.myflorida.com/dor/forms/current/rt800002.pdf> (Last visited Jan. 26, 2016).

experience rating. An employer's tax rate is adjusted annually, and may vary from the maximum rate of 5.4 percent to the minimum rate, which varies each year based on adjustment factors.<sup>13</sup>

### Recovery of Overpayments for Non-Fraudulent Claims

State laws generally differ in their identification, establishment, and collection of overpayments. Like most states, Florida's recovery of non-fraudulent overpayments includes several options, such as age garnishment, deducting any outstanding balance from future unemployment benefits or lottery winnings, and forwarding any unpaid balance to a contracted debt collection agency.<sup>14</sup>

Upon discovering an overpayment, DEO makes a determination of the amount of overpayment and attempts to make recovery of the overpayment. However, DEO must obtain a final judgment through the civil court system before it may utilize the wage garnishment process provided for in ch. 77, F.S.<sup>15</sup> Interest is not assessed, unless and until a civil judgement is entered. For both fraudulent and non-fraudulent cases, the commencement of collections must be initiated within 7 years.<sup>16</sup>

### Fraudulent Claims

When an unemployed individual files a claim for unemployment assistance,<sup>17</sup> DEO validates their identity based on daily cross matches with external entities, obtained through inter-agency agreements.<sup>18</sup> A cross match with the Social Security Administration (SSA) is conducted for all new claims to establish that the social security number used to file a claim is the number assigned to that individual. To further validate identity, a secondary cross match is conducted against the driver license records maintained by the Department of Highway Safety and Motor Vehicles (HSMV). Because DEO does not have access to the full databases of these external partners, DEO must complete additional verification procedures when exceptions occur.<sup>19</sup> The Fraud Initiative and Rules Rating Engine (FIRRE) unit, within DEO, uses specially-developed "algorithms to identify falsely filed claims and block them from receiving benefits."<sup>20</sup> In its first year of operation, FIRRE identified nearly 70,000 fraudulent claims.<sup>21</sup>

In addition to recovery of overpayments, a case in which fraud is established subjects the claimant to disqualification from receiving benefits for up to one year from the date DEO discovers the false or fraudulent representation, and until the overpayment has been repaid in full.<sup>22</sup> Additionally, DEO may refer the case to the state attorney for prosecution as a third degree felony.<sup>23</sup>

The duration of disqualification for fraud in other states is comparable to Florida's, with the majority of states setting it at 52 weeks. Some states further penalize subsequent offenses, such as Alabama which provides a 104 week disqualification for second and subsequent offenses, or Maine which penalizes a third offense with a disqualification to be set by the commissioner of the state RA program. Kansas appears to have the strictest duration of disqualification, which it sets at the latter of five years after commission of the fraudulent act, or after the first day following the last week for which benefits were paid. No states have imposed, in law, a lifetime disqualification.<sup>24</sup>

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<sup>13</sup> *Id.*, at 14.

<sup>14</sup> For state laws on over payments, *see* US Dept. of Labor, Comparison of State Unemployment Laws, *Chapter 6 Overpayments*, available at <http://www.unemploymentinsurance.doleta.gov/unemploy/comparison2015.asp> (Last visited Jan. 28, 2016).

<sup>15</sup> Section 443.151(6)(e), F.S.

<sup>16</sup> Section 443.151(6)(a), F.S.

<sup>17</sup> Section 443.151(2), F.S., requires claims to be filed using the Internet.

<sup>18</sup> In 2013, DEO implemented a new Reemployment Assistance Claims and Benefits Information System pursuant to the requirements of s. 443.1113, F.S.

<sup>19</sup> DEO has limited access to HSMV's Driver and Vehicle Information Database (DAVID) through an inter-agency agreement.

<sup>20</sup> DEO analysis, 2016 Agency Legislative Bill Analysis, HB 1017, at 3 (Jan. 7, 2016).

<sup>21</sup> Letter to Thomas Perez, US Secretary of Labor, from Jesse Panuccio, Exe. Dir. Fla. DEO, RE: Identity Theft and Fraud in Public Benefit Systems (Mar. 13, 2015).

<sup>22</sup> Section 443.101(6), F.S.

<sup>23</sup> Section 443.071, F.S. makes it a third degree felony to make "a false statement or representation, knowing it to be false, or knowingly fails to disclose a material fact to obtain or increase any benefits or other payment..."

<sup>24</sup> Information for this paragraph is summarized from tables by the US Dept. of Labor. *Supra* note 14.

## Racketeering

Section 895.02, F.S., defines a racketeering activity to include the creation of fictitious employer schemes, by reference to s. 443.071(4), F.S. However, the definition of racketeering does not encompass employment benefit fraud, a third degree felony. Instead, s. 443.071(1), F.S., makes employment benefit fraud punishable by a possible combination of penalties, fines, and mandatory minimum prison terms set out in ss. 775.082-084, F.S.

DEO has stated that increased amounts of fraudulent claims have their origin in “organized criminal enterprises... attacking public-benefit systems.”<sup>25</sup> When benefits are obtained by an individual who is using a stolen identity to obtain benefits, DEO cannot investigate the individual making the fraudulent claim, but instead refers such cases to the Florida Department of Law Enforcement and the Inspector General of the U.S. Department of Labor.<sup>26</sup>

## **Effect of Proposed Changes**

The bill creates the “Department of Economic Opportunity Cybercrimes Prevention Act.”

The bill amends the powers and duties of DEO to authorize the Division to employ law enforcement officers. These officers must meet existing requirements for law enforcement officers, as specified in s. 943.13, F.S., and must be certified in law enforcement by the Florida Department of Law Enforcement. The bill tasks these officers with the primary responsibility of statewide investigation, enforcement, and prosecution of violations of the Reemployment Assistance Program and rules as well as other state laws that the Division is specifically authorized to enforce. The secondary responsibility of DEO’s law enforcement officers would be to enforce all other state laws incidental to their primary responsibility. The bill provides that these law enforcement officers must consult and coordinate with appropriate county sheriffs and municipal police departments in exercising the secondary responsibilities, or when participating in the Florida Mutual Aid Plan during a declared state emergency.

In order to facilitate the validation of reemployment assistance claims by DEO and to assist DEO in the identification of fraudulent or false claims for benefits, the bill authorizes HSMV to disclose images and signatures of licensees to DEO, pursuant to an interagency agreement. The images and signatures of licensees maintained by HSMV are not public records and are exempt from the provisions of s. 119.07(1), F.S.

The bill modifies the duration of disqualification for reemployment assistance benefits obtained by false or fraudulent representation. For the first incident that a claimant is found to have committed fraud, the bill would subject the claimant to a disqualification from benefits for five years after the date DEO discovers the first false or fraudulent representation was made. A claimant committing a second act of fraud in a benefit year other than the year of the penalty for the first violation would be denied benefits for 10 years from the date in which the second incident of fraud was discovered, and until any overpayment of benefits has been repaid in full. A claimant committing a third act of fraud in a benefit year other than the years in which the first or second acts of fraud were committed would be denied access to benefits for his or her lifetime. In other words, a claimant would be subjected to:

- Five years disqualification for the first act of fraud;
- 10 years disqualification for the second act of fraud; and
- Lifetime disqualification for the third act of fraud.

The bill authorizes DEO to recover overpayments through attachment and garnishment as provided in Chapters 76 and 77, F.S. Following application to the clerk of court by DEO, a writ would be issued by the clerk, without bond on DEO. The bill provides that issues that are raised by attachment and garnishment for overpayments would be subject to court proceedings, pursuant to Chapters 76 and 77, F.S., with venue in Leon County.

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<sup>25</sup> Letter to Thomas Perez, US Secretary of Labor, from Jesse Panuccio, Exec. Dir. FL DEO, RE: Identity Theft and Fraud in Public Benefit Systems (Mar. 13, 2015).

<sup>26</sup> DEO analysis, 2016 Agency Legislative Bill Analysis, HB 1017 (Jan. 7, 2016).

The bill amends the definition of “racketeering activity,” as it relates to Florida’s Racketeer Influenced and Corrupt Organization Act, to include crimes that are chargeable as reemployment assistance fraud. Although current law includes the creation of fictitious employer schemes as “racketeering activity,” the bill would make each false statement or representation or failure to disclose a material fact a separate, prosecutable offense.

Lastly, the bill provides that it becomes effective upon becoming law.

#### B. SECTION DIRECTORY:

- Section 1: Creates the “Department of Economic Opportunity Cybercrimes Prevention Act.”
- Section 2: Amends s. 20.60, F.S., providing the Division of Workforce Services to employ law enforcement officers.
- Section 3: Amends chapter 322.142, F.S., authorizing HSMV to provide DEO with the color photographic or digital imaged licenses and signatures of licensees that they maintain.
- Section 4: Amends s. 443.101(6), F.S., providing three distinct levels of disqualifications for reemployment assistance benefits based on the number of times a claimant seeking benefits made false or fraudulent representations.
- Section 5: Amends s. 443.151(6), F.S., relating to recovery and recoupment of reemployment assistance benefit overpayments, by authorizing DEO to recover overpayments through attachment and garnishment.
- Section 6: Amends s. 895.02(1)(a)7, F.S., to provide that ‘racketeering activity’ includes a crime that is chargeable under ss. 443.071(1), F.S., relating to reemployment assistance fraud.
- Section 7: Provides that the bill becomes effective upon becoming law.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

1. Revenues:

None.

2. Expenditures:

The bill would have an indeterminate fiscal impact related to any reduction achieved in fraudulent RA claims.

DEO notes that implementation of the bill provisions related to creation of an investigation unit, within DWS, will require 6 full time employees and \$550,000.<sup>27</sup>

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

1. Revenues:

None.

2. Expenditures:

None.

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<sup>27</sup> DEO analysis, 2016 Agency Legislative Bill Analysis, HB 1017 (Jan. 7, 2016).  
**STORAGE NAME:** h1017.EDTS  
**DATE:** 1/28/2016

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**