

ECONOMIC DEVELOPMENT & TOURISM SUBCOMMITTEE

MEETING PACKET

**Monday, February 1, 2016
12:30 PM – 2:30 PM
12 HOB**

**Steve Crisafulli
Speaker**

**Frank Artiles
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Economic Development & Tourism Subcommittee

Start Date and Time: Monday, February 01, 2016 12:30 pm
End Date and Time: Monday, February 01, 2016 02:30 pm
Location: 12 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 1017 Reemployment Assistance Fraud by La Rosa
HB 1133 Emergency Management by Young
HB 1427 Sports Franchise Facilities by Avila

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Friday, January 29, 2016.

By request of the Chair, all Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Friday, January 29, 2016.

NOTICE FINALIZED on 01/28/2016 4:21PM by Lawhon.Amanda

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 <i>SWP</i>	Duncan <i>pbdd</i>
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.¹ The program is administered as a partnership of the federal government and the states.² 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.³

Florida's unemployment insurance program was created by the Legislature in 1937,⁴ and rebranded as the "reemployment assistance" program in 2012.⁵ 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.⁶

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.⁷ 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.⁸ The IRS charges each liable employer a federal unemployment tax of 6.0 percent.⁹ 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.¹⁰

In Florida, RA benefits are financed solely through contributions by employers.¹¹ 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.

¹ 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).

² 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).

³ *Id.*

⁴ Chapter 18402, L.O.F.

⁵ Chapter 2012-30, L.O.F.

⁶ Section 443.1316, F.S.

⁷ FUTA is codified at 26 U.S.C. ss. 3301-3311.

⁸ 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).

⁹ 26 U.S.C. s. 3301.

¹⁰ *Supra* note 8.

¹¹ 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.

The employer's experience rating is based on the employer's own employment records,¹² and serves to stabilize the UCTF, as well as ensure that all employers pay their fair share based on their own 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.¹³

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.¹⁴

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.¹⁵ 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.¹⁶

Fraudulent Claims

When an unemployed individual files a claim for unemployment assistance,¹⁷ DEO validates their identity based on daily cross matches with external entities, obtained through inter-agency agreements.¹⁸ 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.¹⁹ 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."²⁰ In its first year of operation, FIRRE identified nearly 70,000 fraudulent claims.²¹

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.²² Additionally, DEO may refer the case to the state attorney for prosecution as a third degree felony.²³

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

¹³ *Id.*, at 14.

¹⁴ 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).

¹⁵ Section 443.151(6)(e), F.S.

¹⁶ Section 443.151(6)(a), F.S.

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

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

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

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

²¹ 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).

²² Section 443.101(6), F.S.

²³ 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..."

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.²⁴

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."²⁵ 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.²⁶

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:

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

²⁵ 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).

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

- 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.

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 \$550,000.²⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

²⁷ DEO analysis, 2016 Agency Legislative Bill Analysis, HB 1017 (Jan. 7, 2016).

1 A bill to be entitled
2 An act relating to reemployment assistance fraud;
3 providing a short title; amending s. 20.60, F.S.;
4 authorizing the Department of Economic Opportunity to
5 employ law enforcement officers to investigate
6 violations of ch. 443, F.S.; providing qualifications
7 for employment or appointment as a law enforcement
8 officer; specifying the responsibilities of such a law
9 enforcement officer; amending s. 322.142, F.S.; adding
10 the department as an entity that may be issued
11 reproductions from certain files or digital records
12 for specified reasons; amending s. 443.101, F.S.;
13 providing for disqualification from eligibility for
14 reemployment benefits for a specified period of time
15 determined by the number of incidents of false or
16 fraudulent representation and date of repayment of
17 certain overpayments; amending s. 443.151, F.S.;
18 providing methods for the department to collect
19 repayment of benefits; amending s. 895.02, F.S.;
20 expanding the definition of the term "racketeering
21 activity" to include knowingly making false statements
22 or representations or knowingly failing to disclose a
23 material fact to obtain or increase benefits or other
24 payments under ch. 443, F.S., and other specified
25 laws; providing an effective date.
26

27 WHEREAS, the incidence of identity theft and resulting
 28 fraud has reached a crisis level, and

29 WHEREAS, identity theft is especially problematic in this
 30 state, which the Federal Trade Commission reports has the
 31 highest per capita rate of identity theft in the nation, and

32 WHEREAS, stolen identities are used to commit an ever-
 33 expanding range of fraud, including public assistance fraud, and

34 WHEREAS, identity theft and related fraud harm those whose
 35 identities are stolen, rob the social safety net of precious
 36 resources, impose unwarranted costs on taxpayers, and undermine
 37 public confidence in government, and

38 WHEREAS, the Department of Economic Opportunity's efforts
 39 to detect, prevent, and prosecute fraud have revealed that
 40 thousands of fraudulent claims for reemployment assistance are
 41 being filed, and

42 WHEREAS, the Department of Economic Opportunity has made
 43 prevention, detection, and prosecution of reemployment
 44 assistance fraud a top priority and has identified additional
 45 resources and tools necessary to effectively combat fraud, NOW,
 46 THEREFORE,

47
 48 Be It Enacted by the Legislature of the State of Florida:

49
 50 Section 1. This act may be cited as the "Department of
 51 Economic Opportunity Cybercrime Prevention Act."

52 Section 2. Paragraph (d) is added to subsection (5) of

53 section 20.60, Florida Statutes, to read:

54 20.60 Department of Economic Opportunity; creation; powers
55 and duties.—

56 (5) The divisions within the department have specific
57 responsibilities to achieve the duties, responsibilities, and
58 goals of the department. Specifically:

59 (d) The Division of Workforce Services may employ law
60 enforcement officers. Each law enforcement officer employed by
61 the division must meet the requirements for employment or
62 appointment as a law enforcement officer specified in s. 943.13
63 and must be certified under chapter 943 as a law enforcement
64 officer by the Department of Law Enforcement. Each law
65 enforcement officer has statewide jurisdiction and authority
66 granted by chapter 901.

67 1. The primary responsibility of each law enforcement
68 officer appointed under this section is the statewide
69 investigation, enforcement, and prosecution of violations of
70 chapter 443 and rules adopted thereunder, as well as other state
71 laws that the division is specifically authorized to enforce.

72 2. The secondary responsibility of each law enforcement
73 officer appointed under this section is to enforce all other
74 state laws; however, such enforcement must be incidental to the
75 officer's exercise of his or her primary responsibility, and an
76 officer may exercise the powers of a deputy sheriff only after
77 consultation or coordination with the appropriate local
78 sheriff's office or municipal police department or when the

79 division participates in the Florida Mutual Aid Plan during a
 80 declared state emergency.

81 Section 3. Present paragraphs (k) and (l) of subsection
 82 (4) of section 322.142, Florida Statutes, are redesignated as
 83 paragraphs (l) and (m), respectively, and a new paragraph (k) is
 84 added to that subsection, to read:

85 322.142 Color photographic or digital imaged licenses.—

86 (4) The department may maintain a film negative or print
 87 file. The department shall maintain a record of the digital
 88 image and signature of the licensees, together with other data
 89 required by the department for identification and retrieval.
 90 Reproductions from the file or digital record are exempt from
 91 the provisions of s. 119.07(1) and may be made and issued only:

92 (k) To the Department of Economic Opportunity pursuant to
 93 an interagency agreement to facilitate the validation of
 94 reemployment assistance claims and the identification of
 95 fraudulent or false reemployment assistance claims.

96 Section 4. Subsection (6) of section 443.101, Florida
 97 Statutes, is amended to read:

98 443.101 Disqualification for benefits.—An individual shall
 99 be disqualified for benefits:

100 (6) For making any false or fraudulent representation for
 101 the purpose of obtaining benefits contrary to this chapter,
 102 constituting a violation under s. 443.071. The disqualification
 103 imposed under this subsection begins ~~shall begin with~~ the week
 104 in which the false or fraudulent representation is made and

105 continues ~~shall continue~~ for a period of:

106 (a) Five years ~~not to exceed 1 year~~ after the date the
 107 Department of Economic Opportunity discovers the first incident
 108 of false or fraudulent representation and until any overpayment
 109 of benefits resulting from such representation has been repaid
 110 in full.

111 (b) Ten years after the date the Department of Economic
 112 Opportunity discovers the second incident of false or fraudulent
 113 representation, which must occur in a benefit year other than
 114 the benefit year of the first incident, and until any
 115 overpayment of benefits resulting from such representation has
 116 been repaid in full.

117 (c) The lifetime of the individual after the date the
 118 Department of Economic Opportunity discovers the third incident
 119 of false or fraudulent representation, which must occur in a
 120 benefit year that is not the benefit year of the first or second
 121 incident.

122
 123 This disqualification may be appealed in the same manner as any
 124 other disqualification imposed under this section. A conviction
 125 by any court of competent jurisdiction in this state of the
 126 offense prohibited or punished by s. 443.071 is conclusive upon
 127 the appeals referee and the commission of the making of the
 128 false or fraudulent representation for which disqualification is
 129 imposed under this section.

130 Section 5. Paragraph (e) of subsection (6) of section

131 443.151, Florida Statutes, is amended to read:

132 443.151 Procedure concerning claims.—

133 (6) RECOVERY AND RECOUPMENT.—

134 (e) The department shall collect the repayment of benefits
 135 without interest by any of the following methods: ~~the deduction~~
 136 ~~of benefits through a redetermination or by a civil action.~~

137 1. The deduction of reemployment assistance benefits
 138 through a redetermination.

139 2. The recovery of overpayments through attachment and
 140 garnishment as provided in chapters 76 and 77. An overpayment
 141 determination, decision, or order issued by the department or
 142 commission which has become final as provided in this section
 143 may be enforced by attachment or garnishment in the same manner
 144 as a judgment of any court of competent jurisdiction as provided
 145 in chapters 76 and 77 for a debt due. Upon application to the
 146 clerk of court by the department, a writ shall be issued by the
 147 clerk of court as upon a judgment of the court duly docketed and
 148 recorded. These writs must be returnable to the court. A bond
 149 may not be required of the department as a condition for the
 150 issuance of a writ of attachment or a writ of garnishment.
 151 Issues raised under proceedings by attachment or garnishment
 152 must be tried by the court in the same manner as a judgment
 153 under chapters 76 and 77. Venue for attachment and garnishment
 154 proceedings originating under this section is in Leon County.

155 3. Any additional recovery method provided for by law.

156 Section 6. Paragraph (a) of subsection (1) of section

157 895.02, Florida Statutes, is amended to read:

158 895.02 Definitions.—As used in ss. 895.01-895.08, the
159 term:

160 (1) "Racketeering activity" means to commit, to attempt to
161 commit, to conspire to commit, or to solicit, coerce, or
162 intimidate another person to commit:

163 (a) Any crime that is chargeable by petition, indictment,
164 or information under the following provisions of the Florida
165 Statutes:

166 1. Section 210.18, relating to evasion of payment of
167 cigarette taxes.

168 2. Section 316.1935, relating to fleeing or attempting to
169 elude a law enforcement officer and aggravated fleeing or
170 eluding.

171 3. Section 403.727(3)(b), relating to environmental
172 control.

173 4. Section 409.920 or s. 409.9201, relating to Medicaid
174 fraud.

175 5. Section 414.39, relating to public assistance fraud.

176 6. Section 440.105 or s. 440.106, relating to workers'
177 compensation.

178 7. Section 443.071(1) or (4) ~~Section 443.071(4)~~, relating
179 to ~~creation of a fictitious employer scheme to commit~~
180 reemployment assistance fraud.

181 8. Section 465.0161, relating to distribution of medicinal
182 drugs without a permit as an Internet pharmacy.

- 183 9. Section 499.0051, relating to crimes involving
- 184 contraband and adulterated drugs.
- 185 10. Part IV of chapter 501, relating to telemarketing.
- 186 11. Chapter 517, relating to sale of securities and
- 187 investor protection.
- 188 12. Section 550.235 or s. 550.3551, relating to dogracing
- 189 and horseracing.
- 190 13. Chapter 550, relating to jai alai frontons.
- 191 14. Section 551.109, relating to slot machine gaming.
- 192 15. Chapter 552, relating to the manufacture,
- 193 distribution, and use of explosives.
- 194 16. Chapter 560, relating to money transmitters, if the
- 195 violation is punishable as a felony.
- 196 17. Chapter 562, relating to beverage law enforcement.
- 197 18. Section 624.401, relating to transacting insurance
- 198 without a certificate of authority, s. 624.437(4)(c)1., relating
- 199 to operating an unauthorized multiple-employer welfare
- 200 arrangement, or s. 626.902(1)(b), relating to representing or
- 201 aiding an unauthorized insurer.
- 202 19. Section 655.50, relating to reports of currency
- 203 transactions, when such violation is punishable as a felony.
- 204 20. Chapter 687, relating to interest and usurious
- 205 practices.
- 206 21. Section 721.08, s. 721.09, or s. 721.13, relating to
- 207 real estate timeshare plans.
- 208 22. Section 775.13(5)(b), relating to registration of

209 persons found to have committed any offense for the purpose of
 210 benefiting, promoting, or furthering the interests of a criminal
 211 gang.

212 23. Section 777.03, relating to commission of crimes by
 213 accessories after the fact.

214 24. Chapter 782, relating to homicide.

215 25. Chapter 784, relating to assault and battery.

216 26. Chapter 787, relating to kidnapping or human
 217 trafficking.

218 27. Chapter 790, relating to weapons and firearms.

219 28. Chapter 794, relating to sexual battery, but only if
 220 such crime was committed with the intent to benefit, promote, or
 221 further the interests of a criminal gang, or for the purpose of
 222 increasing a criminal gang member's own standing or position
 223 within a criminal gang.

224 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
 225 796.05, or s. 796.07, relating to prostitution.

226 30. Chapter 806, relating to arson and criminal mischief.

227 31. Chapter 810, relating to burglary and trespass.

228 32. Chapter 812, relating to theft, robbery, and related
 229 crimes.

230 33. Chapter 815, relating to computer-related crimes.

231 34. Chapter 817, relating to fraudulent practices, false
 232 pretenses, fraud generally, and credit card crimes.

233 35. Chapter 825, relating to abuse, neglect, or
 234 exploitation of an elderly person or disabled adult.

- 235 36. Section 827.071, relating to commercial sexual
 236 exploitation of children.
- 237 37. Section 828.122, relating to fighting or baiting
 238 animals.
- 239 38. Chapter 831, relating to forgery and counterfeiting.
- 240 39. Chapter 832, relating to issuance of worthless checks
 241 and drafts.
- 242 40. Section 836.05, relating to extortion.
- 243 41. Chapter 837, relating to perjury.
- 244 42. Chapter 838, relating to bribery and misuse of public
 245 office.
- 246 43. Chapter 843, relating to obstruction of justice.
- 247 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
 248 s. 847.07, relating to obscene literature and profanity.
- 249 45. Chapter 849, relating to gambling, lottery, gambling
 250 or gaming devices, slot machines, or any of the provisions
 251 within that chapter.
- 252 46. Chapter 874, relating to criminal gangs.
- 253 47. Chapter 893, relating to drug abuse prevention and
 254 control.
- 255 48. Chapter 896, relating to offenses related to financial
 256 transactions.
- 257 49. Sections 914.22 and 914.23, relating to tampering with
 258 or harassing a witness, victim, or informant, and retaliation
 259 against a witness, victim, or informant.
- 260 50. Sections 918.12 and 918.13, relating to tampering with

HB 1017

2016

261 | jurors and evidence.

262 | Section 7. This act shall take effect upon becoming a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Economic Development &
 2 Tourism Subcommittee
 3 Representative La Rosa offered the following:
 4

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
 7 Section 1. This act may be cited as the "Department of
 8 Economic Opportunity Cybercrime Prevention Act."

9 Section 2. Paragraphs (k) and (l) of subsection (4) of
 10 section 322.142, Florida Statutes, are redesignated as
 11 paragraphs (l) and (m), respectively, and paragraph (k) is added
 12 to that subsection, to read:

13 322.142 Color photographic or digital imaged licenses.—
 14 (4) The department may maintain a film negative or print
 15 file. The department shall maintain a record of the digital
 16 image and signature of the licensees, together with other data
 17 required by the department for identification and retrieval.



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18 Reproductions from the file or digital record are exempt from
19 the provisions of s. 119.07(1) and may be made and issued only:

20 (k) To the Department of Economic Opportunity pursuant to
21 an interagency agreement to facilitate the validation of
22 reemployment assistance claims and the identification of
23 fraudulent or false reemployment assistance claims.

24 Section 3. Subsection (6) of section 443.101, Florida
25 Statutes, is amended to read:

26 443.101 Disqualification for benefits.—An individual shall
27 be disqualified for benefits:

28 (6) For making any false or fraudulent representation for
29 the purpose of obtaining benefits contrary to this chapter,
30 constituting a violation under s. 443.071.

31 (a) The disqualification imposed under this subsection
32 shall begin with the week in which the false or fraudulent
33 representation is made and shall continue for a period not to
34 exceed 1 year after the date the Department of Economic
35 Opportunity discovers the false or fraudulent representation and
36 until any overpayment of benefits resulting from such
37 representation has been repaid in full. However, if the false or
38 fraudulent representation made for the purpose of obtaining
39 benefits contrary to this chapter, constituting a violation
40 under s. 443.071, is made in furtherance of any state or federal
41 felony crime relating to identity theft or inappropriate use of
42 personally identifying information, then the disqualification
43 imposed under this subsection shall be for a period of 5 years



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44 from the date of the first conviction, and 10 years from the
45 date of any subsequent conviction.

46 (b) This disqualification may be appealed in the same
47 manner as any other disqualification imposed under this section.
48 A conviction by any court of competent jurisdiction in this
49 state of the offense prohibited or punished by s. 443.071 is
50 conclusive upon the appeals referee and the commission of the
51 making of the false or fraudulent representation for which
52 disqualification is imposed under this section.

53 Section 4. Paragraph (a) of subsection (1) of section
54 895.02, Florida Statutes, is amended to read:

55 895.02 Definitions.—As used in ss. 895.01-895.08, the
56 term:

57 (1) "Racketeering activity" means to commit, to attempt to
58 commit, to conspire to commit, or to solicit, coerce, or
59 intimidate another person to commit:

60 (a) Any crime that is chargeable by petition, indictment,
61 or information under the following provisions of the Florida
62 Statutes:

63 1. Section 210.18, relating to evasion of payment of
64 cigarette taxes.

65 2. Section 316.1935, relating to fleeing or attempting to
66 elude a law enforcement officer and aggravated fleeing or
67 eluding.

68 3. Section 403.727(3)(b), relating to environmental
69 control.



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- 70 4. Section 409.920 or s. 409.9201, relating to Medicaid
71 fraud.
- 72 5. Section 414.39, relating to public assistance fraud.
- 73 6. Section 440.105 or s. 440.106, relating to workers'
74 compensation.
- 75 7. Section 443.071(1) or (4) ~~Section 443.071(4)~~, relating
76 to ~~creation of a fictitious employer scheme to commit~~
77 reemployment assistance fraud.
- 78 8. Section 465.0161, relating to distribution of medicinal
79 drugs without a permit as an Internet pharmacy.
- 80 9. Section 499.0051, relating to crimes involving
81 contraband and adulterated drugs.
- 82 10. Part IV of chapter 501, relating to telemarketing.
- 83 11. Chapter 517, relating to sale of securities and
84 investor protection.
- 85 12. Section 550.235 or s. 550.3551, relating to dogracing
86 and horseracing.
- 87 13. Chapter 550, relating to jai alai frontons.
- 88 14. Section 551.109, relating to slot machine gaming.
- 89 15. Chapter 552, relating to the manufacture,
90 distribution, and use of explosives.
- 91 16. Chapter 560, relating to money transmitters, if the
92 violation is punishable as a felony.
- 93 17. Chapter 562, relating to beverage law enforcement.
- 94 18. Section 624.401, relating to transacting insurance
95 without a certificate of authority, s. 624.437(4)(c)1., relating



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96 to operating an unauthorized multiple-employer welfare
97 arrangement, or s. 626.902(1)(b), relating to representing or
98 aiding an unauthorized insurer.

99 19. Section 655.50, relating to reports of currency
100 transactions, when such violation is punishable as a felony.

101 20. Chapter 687, relating to interest and usurious
102 practices.

103 21. Section 721.08, s. 721.09, or s. 721.13, relating to
104 real estate timeshare plans.

105 22. Section 775.13(5)(b), relating to registration of
106 persons found to have committed any offense for the purpose of
107 benefiting, promoting, or furthering the interests of a criminal
108 gang.

109 23. Section 777.03, relating to commission of crimes by
110 accessories after the fact.

111 24. Chapter 782, relating to homicide.

112 25. Chapter 784, relating to assault and battery.

113 26. Chapter 787, relating to kidnapping or human
114 trafficking.

115 27. Chapter 790, relating to weapons and firearms.

116 28. Chapter 794, relating to sexual battery, but only if
117 such crime was committed with the intent to benefit, promote, or
118 further the interests of a criminal gang, or for the purpose of
119 increasing a criminal gang member's own standing or position
120 within a criminal gang.



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- 121 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
122 796.05, or s. 796.07, relating to prostitution.
- 123 30. Chapter 806, relating to arson and criminal mischief.
- 124 31. Chapter 810, relating to burglary and trespass.
- 125 32. Chapter 812, relating to theft, robbery, and related
126 crimes.
- 127 33. Chapter 815, relating to computer-related crimes.
- 128 34. Chapter 817, relating to fraudulent practices, false
129 pretenses, fraud generally, and credit card crimes.
- 130 35. Chapter 825, relating to abuse, neglect, or
131 exploitation of an elderly person or disabled adult.
- 132 36. Section 827.071, relating to commercial sexual
133 exploitation of children.
- 134 37. Section 828.122, relating to fighting or baiting
135 animals.
- 136 38. Chapter 831, relating to forgery and counterfeiting.
- 137 39. Chapter 832, relating to issuance of worthless checks
138 and drafts.
- 139 40. Section 836.05, relating to extortion.
- 140 41. Chapter 837, relating to perjury.
- 141 42. Chapter 838, relating to bribery and misuse of public
142 office.
- 143 43. Chapter 843, relating to obstruction of justice.
- 144 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
145 s. 847.07, relating to obscene literature and profanity.



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146 45. Chapter 849, relating to gambling, lottery, gambling
147 or gaming devices, slot machines, or any of the provisions
148 within that chapter.

149 46. Chapter 874, relating to criminal gangs.

150 47. Chapter 893, relating to drug abuse prevention and
151 control.

152 48. Chapter 896, relating to offenses related to financial
153 transactions.

154 49. Sections 914.22 and 914.23, relating to tampering with
155 or harassing a witness, victim, or informant, and retaliation
156 against a witness, victim, or informant.

157 50. Sections 918.12 and 918.13, relating to tampering with
158 jurors and evidence.

159 Section 5. This act shall take effect upon becoming law.

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T I T L E A M E N D M E N T

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Remove everything before the enacting clause and insert:
An act relating to reemployment assistance fraud; providing a
short title; amending s. 322.142, F.S.; adding the department as
an entity that may be issued reproductions from certain files or
digital records for specified reasons; amending s. 443.101,
F.S.; providing for disqualification from eligibility for
reemployment benefits for a specified period of time determined
by the number of incidents of false or fraudulent
representation; amending s. 895.02, F.S.; expanding the



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172 definition of the term "racketeering activity" to include
173 knowingly making false statements or representations or
174 knowingly failing to disclose a material fact to obtain or
175 increase benefits or other payments under ch. 443, F.S.; and
176 other specified laws; providing an effective date.

177

178 WHEREAS, the incidence of identity theft and resulting
179 fraud has reached a crisis level, and

180 WHEREAS, identity theft is especially problematic in this
181 state, which the Federal Trade Commission reports has the
182 highest per capita rate of identity theft in the nation, and

183 WHEREAS, stolen identities are used to commit an ever
184 expanding range of fraud, including public assistance fraud, and

185 WHEREAS, identity theft and related fraud harm those whose
186 identities are stolen, rob the social safety net of precious
187 resources, impose unwarranted costs on taxpayers, and undermine
188 public confidence in government, and

189 WHEREAS, the Department of Economic Opportunity's efforts
190 to detect, prevent, and prosecute fraud have revealed that
191 thousands of fraudulent claims for reemployment assistance are
192 being filed, and

193 WHEREAS, the Department of Economic Opportunity has made
194 prevention, detection, and prosecution of reemployment
195 assistance fraud a top priority and has identified additional
196 resources and tools necessary to effectively combat fraud, NOW,
197 THEREFORE,



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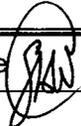
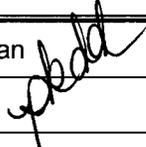
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Be It Enacted by the Legislature of the State of Florida:

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1133 Emergency Management
SPONSOR(S): Young
TIED BILLS: IDEN./SIM. BILLS: SB 1262

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

SUMMARY ANALYSIS

HB1133 creates the "Facilitating Business Rapid Response to State Declared Disasters Act" and 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 specifies that this exemption on out-of-state businesses extends to:

- Reemployment assistance taxes;
- State or local professional or occupational licensing requirements or related fees;
- Gross receipts taxes;
- Local business taxes;
- Taxes on the operation of commercial motor vehicles;
- Corporate income tax; and
- Tangible personal property 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 defines terms and establishes notification requirements be provided to the Division of Emergency Management, if requested. Additionally, 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 any exemptions provided in this act and is subject to the state's normal standards for establishing presence or residency or doing business in the state.

The bill has not been scored by the Revenue Estimating Conference.

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:¹

- 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.² 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.³

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

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).⁵ ESF #18 is the unit that consolidates multiple agencies that perform functions that ensure business, industry, and economic stabilization.⁶ 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.⁷

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.⁸ The program is administered as a partnership of the

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

² Section 252.36(2) F.S.

³ Section 252.36(5) F.S.

⁴ Section 252.36(2) F.S.

⁵ 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.)

⁶ DEM, Comprehensive Emergency Management Plan Appendix XVIII, available at: http://floridadisaster.org/documents/CEMP/2014/2014%20Finalized%20ESFs/2014%20ESF%2018%20Appendix_finalized.pdf.

⁷ *Id.*

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

federal government and the states.⁹ In general, states are permitted to set eligibility conditions for 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.¹⁰

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).¹¹ 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 1937,¹² and rebranded as the "reemployment assistance" program in 2012.¹³ The Department of Economic Opportunity (DEO) is the agency responsible for administering the RA program.¹⁴ DEO contracts with the Department of Revenue (DOR) to provide reemployment tax collection services.¹⁵ 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.¹⁶ 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.¹⁷ 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.¹⁸

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.¹⁹ An employer's initial state tax rate is 2.7 percent.²⁰ 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.²¹ The adjustment in the tax rate is determined by calculating a statutory formula that incorporates an employer's experience rating,²² size of the UC Trust Fund, and other socialized costs.

⁹ 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.).

¹⁰ Title III, Title IX, and Title XII of the Social Security Act.

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

¹² Chapter 18402, L.O.F.

¹³ Chapter 2012-30, L.O.F.

¹⁴ Sections 20.60(5)(c)(3) and 443.171, F.S.

¹⁵ Section 443.1316, F.S.

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

¹⁷ *Id.*

¹⁸ 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://workforcesecurity.doleta.gov/unemploy/finance.asp> (Last visited Jan. 28, 2016.).

¹⁹ Section 443.1217(2), F.S.

²⁰ Section 443.131(2)(a), F.S.

²¹ Section 443.131(2)(b), F.S.

²² Section 443.131(3)(b), F.S.

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.²³ The DBPR is the agency charged with licensing and regulating various businesses and professionals in 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.²⁴ 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 \$2,500.²⁵

Gross Receipts Taxes

State law authorizes a tax to be imposed on gross receipts from utility services that are delivered to a retail consumer.²⁶ "Utility service" means electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power, including transportation, delivery, transmission, and distribution of the electricity or natural or manufactured gas. This subsection does not broaden the definition of utility service to include separately stated charges for tangible personal property or services which are not charges for the electricity or natural or manufactured gas or the transportation, delivery, transmission, or distribution of electricity or natural or manufactured gas.²⁷

The gross receipts tax is imposed at the rate of 2.5 percent on the gross receipts of sellers of electricity and natural or manufactured gas, and at a rate of 2.52 percent on the gross receipts of sellers of communications services. There is an additional 2.6 percent gross receipts tax levied against the electricity sales tax base.

Local Business Taxes

The local business tax represents the fees 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.²⁸

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.²⁹ State law exempts, or allows local governments to exempt, certain individuals from all or some portion of local business taxes.³⁰ 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

²³ Chapter 93-220, L.O.F.

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

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

²⁶ Section 203.01(1)(a)1., F.S.

²⁷ Section 203.012(3), F.S.

²⁸ 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.).

²⁹ Section s. 205.0535(5), F.S.

³⁰ See ch. 205, F.S., relating to local business taxes.

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.³¹ 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.³²

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. Penalties³³ with interest³⁴ 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.³⁵

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 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.³⁶

Corporate Income Taxes

Florida levies a corporate income tax on corporations at 5.5 percent of income earned in Florida.³⁷ The calculation of Florida corporate income tax starts with a corporation's federal taxable income.³⁸ 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.³⁹ 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.⁴⁰ 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.⁴¹

The Legislative Office of Economic and Demographic Research (EDR) forecasted increases in corporate income tax revenues of \$141.4 million in Fiscal Year 2015-16 and \$181.8 million in Fiscal

³¹ Section 205.065, F.S.

³² *Id.*

³³ Sections 207.007(1), 207.012, 207.013, and 207.014, F.S.

³⁴ Section 207.007(2), F.S.

³⁵ Section 207.007(3), F.S.

³⁶ FDOT, Motor Carrier Size and Weight, available at <http://www.dot.state.fl.us/statemaintenanceoffice/motorcarrier.shtm> (Last visited Jan. 28, 2016.).

³⁷ s. 220.11, F.S.

³⁸ s. 220.12, F.S.

³⁹ See s. 220.15, F.S.

⁴⁰ 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>.

⁴¹ Section 220.14, F.S.

Year 2016-17. In doing so, they relied upon a forecast adopted by the National Economic Estimating Conference in July of 2015, which expected stronger corporate profits during this timeframe.⁴²

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.⁴³

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.⁴⁴ There are currently more than 250 different exemptions, exclusions, deductions, and credits from sales and use tax.⁴⁵ 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.

Effect of Proposed Changes

The bill creates the "Facilitating Business Rapid Response to State Declared Disasters Act."

Definitions

The bill defines the following terms as follows:

- "Disaster-related work or 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.
- "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
 - 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, 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 and equipment owned or used by communication networks, electric generating systems, transmission and distribution systems, gas distribution systems, or water pipelines; and related support facilities that serve multiple persons which include, but are not limited to, buildings, offices, power and communication lines and poles, pipes, structures, and equipment.
- "Mutual aid agreement" means an agreement to which one or more business entities are parties and under which a public utility, municipally owned utility, electric cooperative, or joint agency owning, operating, or owning and operating infrastructure used for electric 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:

⁴² Florida Legislature, Office of Economic and Demographic Research, State of Florida Long-range Financial Outlook: Fiscal Years 2016-17 through 2018-19 (Fall 2015) available at http://edr.state.fl.us/Content/long-range-financial-outlook/3-Year-Plan_Fall-2015_1617-1819.pdf (Last visited Jan. 28, 2016.).

⁴³ Section 192.001(11)(d), F.S.

⁴⁴ See ch. 212, F.S.

⁴⁵ *Supra* note 25 at 164-167.

- Does not have a presence in this state, except with respect to the performance of disaster-related work or 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 disaster-related work or emergency-related work in this state.
- Is not registered and does not have tax filings or presence sufficient to require the collection or payment of a tax in this state 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 disaster-related work or emergency-related work 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.

Exemptions for Out-of-State Businesses and Employees

The bill provides that an out-of-state business conducts operations within the state solely to perform disaster-related work or 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 following taxes and fees are exempt:

- Reemployment assistance taxes.
- State or local professional or occupational licensing requirements or related fees.
- Gross receipts taxes.
- Local business taxes.
- Taxes on the operation of commercial motor vehicles.
- Corporate income tax.
- Tangible personal property 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 disaster-related work or 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 disaster-related work or emergency-related work during a disaster-response period is not required to: register, file, or remit state or local taxes; and comply with state or local occupational licensing requirements or related fees.

However, an out-of-state employee or out-of-state business whose transaction of business is limited to the performance of disaster-related work or emergency-related work during a disaster-response period is subject to motor and other fuel taxes imposed pursuant to chapter 206, F.S., and sales and use taxes imposed pursuant to chapter 212, F.S., unless the employee or business is otherwise exempt from such tax.

Out-of-State Business Notification

If requested by the Division of Emergency Management (DEM), an out-of-state business is required to provide to DEM a statement specifying that the out-of-state business has entered the state for purposes performing disaster-related work or emergency-related work. The statement must also include the following information regarding the out-of-state business:

- The business name.
- The state of domicile.
- The address of its principal office.
- The federal tax identification number.
- The date that the business entered the state.
- Contact information.

Additionally, if requested by DEM, a registered business must provide a statement to DEM that includes the information listed above for any affiliate of the registered business that has entered the state as an out-of-state business. The statement must also include the contact information for the registered business.

Obligations after Disaster-Response Period

An out-of-state business or out-of-state employee who remains in the state after the disaster-response period is not entitled to any exemptions provided in this section and is subject to the state's normal standards for establishing presence or residency or doing business in the state.

The bill provides an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Creates s. 252.64, F.S., the "Facilitating Business Rapid Response to State Declared Disasters Act."

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:

The bill has not been scored by the Revenue Estimating Conference.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Given that state law allows certain exemptions from local business taxes and does not prohibit local governments from further exempting businesses from local business taxes,⁴⁶ the fiscal impact of the provisions in the bill related to local tax exemptions is unclear.

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 more quickly.

D. FISCAL COMMENTS:

The bill has not been scored by the Revenue Estimating Conference.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an 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 a state tax shared with counties or municipalities

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is not clear as to how the Department of Revenue will administer certain provisions in the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁴⁶ See ch. 205, F.S.

1 A bill to be entitled
 2 An act relating to emergency management; creating s.
 3 252.64, F.S.; providing a short title; defining terms;
 4 providing exemptions from certain registration and
 5 licensing requirements and taxes for out-of-state
 6 businesses and employees who enter the state in
 7 response to a disaster or an emergency; specifying the
 8 applicability of certain transaction taxes and fees;
 9 requiring an out-of-state business or registered
 10 business to provide a statement to the Division of
 11 Emergency Management in the Executive Office of the
 12 Governor under certain circumstances; prescribing the
 13 content of the statement; specifying the obligations
 14 of an out-of-state business or employee after the
 15 disaster-response period; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 252.64, Florida Statutes, is created
 20 and incorporated into part I of chapter 252, Florida Statutes,
 21 to read:

22 252.64 Facilitating Business Rapid Response to State
 23 Declared Disasters Act.-

24 (1) SHORT TITLE.-This section may be cited as the
 25 "Facilitating Business Rapid Response to State Declared
 26 Disasters Act."

27 (2) DEFINITIONS.—As used in this section, the term:
 28 (a) "Disaster-related work" or "emergency-related work"
 29 means repairing, renovating, installing, building, rendering
 30 services, or other business activities that relate to
 31 infrastructure that has been damaged, impaired, or destroyed by
 32 an event that has resulted in a declaration of a state of
 33 emergency.
 34 (b) "Disaster-response period" means:
 35 1. A period that begins 10 calendar days before the first
 36 day of a declared state of emergency and ends on the 60th
 37 calendar day after the end of the declared state of emergency;
 38 or
 39 2. A period that begins on the date that an out-of-state
 40 business enters this state in good faith under a mutual aid
 41 agreement and in anticipation of a disaster, regardless of
 42 whether a state of emergency is declared, and ends on the date
 43 that the work is concluded, or 7 calendar days after the out-of-
 44 state business enters this state, whichever occurs first.
 45 (c) "Infrastructure" means public roads; public bridges;
 46 property and equipment owned or used by communication networks,
 47 electric generating systems, transmission and distribution
 48 systems, gas distribution systems, or water pipelines; and
 49 related support facilities that serve multiple persons which
 50 include, but are not limited to, buildings, offices, power and
 51 communication lines and poles, pipes, structures, and equipment.
 52 (d) "Mutual aid agreement" means an agreement to which one

53 or more business entities are parties and under which a public
 54 utility, municipally owned utility, electric cooperative, or
 55 joint agency owning, operating, or owning and operating
 56 infrastructure used for electric generation, transmission, or
 57 distribution in this state may request that an out-of-state
 58 business perform work in this state in anticipation of a
 59 disaster or an emergency.

60 (e) "Out-of-state business" means a business entity that:

61 1. Does not have a presence in this state, except with
 62 respect to the performance of disaster-related work or
 63 emergency-related work, and conducts no business in this state,
 64 and whose services are requested by a registered business or by
 65 a unit of state or local government for purposes of performing
 66 disaster-related work or emergency-related work in this state;
 67 and

68 2. Is not registered and does not have tax filings or
 69 presence sufficient to require the collection or payment of a
 70 tax in this state before the disaster-response period.

71
 72 The term also includes a business entity that is affiliated with
 73 a registered business solely through common ownership.

74 (f) "Out-of-state employee" means an employee who does not
 75 work in this state, except for disaster-related work or
 76 emergency-related work during a disaster-response period.

77 (g) "Registered business" means a business entity that is
 78 registered to do business in this state before the disaster-

79 response period begins.

80 (3) EXEMPTIONS FOR OUT-OF-STATE BUSINESSES AND EMPLOYEES.-

81 (a) Notwithstanding any other law and except as provided
 82 in subsection (4), an out-of-state business that is conducting
 83 operations within this state solely for purposes of performing
 84 disaster-related work or emergency-related work during a
 85 disaster-response period or pursuant to a mutual aid agreement
 86 is not considered to have established a level of presence that
 87 would require that business to register, file, and remit state
 88 or local taxes or fees or require that business to be subject to
 89 any registration, licensing, or filing requirements in this
 90 state. For purposes of any state or local tax on or measured, in
 91 whole or in part, by net or gross income or receipts, the
 92 activity of the out-of-state business conducted in this state
 93 during the disaster-response period must be disregarded with
 94 respect to any filing requirements for such tax, including the
 95 filing required for a consolidated group of which the out-of-
 96 state business is a subsidiary. This exemption includes the
 97 following:

98 1. Reemployment assistance taxes.

99 2. State or local professional or occupational licensing
 100 requirements or related fees.

101 3. Gross receipts taxes.

102 4. Local business taxes.

103 5. Taxes on the operation of commercial motor vehicles.

104 6. Corporate income tax.

105 7. Tangible personal property tax on equipment that is
 106 brought into the state by the out-of-state business, used by the
 107 out-of-state business only to perform disaster-related work or
 108 emergency-related work during the disaster-response period, and
 109 removed from the state by the out-of-state business following
 110 the disaster-response period.

111 (b) Notwithstanding any other law and except as provided
 112 in subsection (4), an out-of-state employee whose only
 113 employment in this state is for the performance of disaster-
 114 related work or emergency-related work during a disaster-
 115 response period is not required to:

116 1. Register, file, or remit state or local taxes.

117 2. Comply with state or local occupational licensing
 118 requirements or related fees.

119 (4) TRANSACTION TAXES AND FEES.—An out-of-state employee
 120 or out-of-state business whose transaction of business in this
 121 state is limited to the performance of disaster-related work or
 122 emergency-related work during a disaster-response period is
 123 subject to motor and other fuel taxes imposed pursuant to
 124 chapter 206 and sales and use taxes imposed pursuant to chapter
 125 212, unless the employee or business is otherwise exempt from
 126 such tax.

127 (5) NOTIFICATION PROCEDURES.—

128 (a) If requested by the division, an out-of-state business
 129 shall provide to the division a statement specifying that the
 130 out-of-state business has entered the state for purposes of

131 performing disaster-related work or emergency-related work. The
 132 statement must also include the following information regarding
 133 the out-of-state business:

- 134 1. The business name.
- 135 2. The state of domicile.
- 136 3. The address of its principal office.
- 137 4. The federal tax identification number.
- 138 5. The date that the business entered the state.
- 139 6. Contact information.

140 (b) If requested by the division, a registered business
 141 shall provide a statement to the division that includes the
 142 information listed in paragraph (a) for any affiliate of the
 143 registered business that has entered the state as an out-of-
 144 state business. The statement must also include the contact
 145 information for the registered business.

146 (6) OBLIGATIONS AFTER DISASTER-RESPONSE PERIOD.—An out-of-
 147 state business or out-of-state employee who remains in this
 148 state after the disaster-response period is not entitled to any
 149 exemptions provided in this section and is subject to the
 150 state's normal standards for establishing presence or residency
 151 or doing business in the state.

152 Section 2. This act shall take effect upon becoming a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Economic Development &
 2 Tourism Subcommittee
 3 Representative Young offered the following:
 4

Amendment (with title amendment)

5
 6 Remove everything after the enacting clause and insert:
 7 Section 1. Subsection (3) of Section 213.055, Florida
 8 Statutes, is created to read:

9 3) Business Rapid Response to State Declared Emergencies.-

10 (a) DEFINITIONS.-As used in this subsection, the term:

11 1. "Emergency-related work" means repairing, renovating,
 12 installing, building, rendering services, or other business
 13 activities that relate to infrastructure that has been damaged,
 14 impaired, or destroyed by an event that has resulted in a
 15 declaration of a state of emergency.

16 2. "Disaster-response period" means:

17 a. A period that begins 10 calendar days before the first



Amendment No. 1

18 day of a declared state of emergency and ends on the 60th
19 calendar day after the end of the declared state of emergency;
20 or

21 b. A period that begins on the date that an out-of-state
22 business enters this state in good faith under a mutual aid
23 agreement and in anticipation of a disaster, regardless of
24 whether a state of emergency is declared, and ends on the date
25 that the work is concluded, or 7 calendar days after the out-of-
26 state business enters this state, whichever occurs first.

27 3. "Infrastructure" means public roads; public bridges;
28 property and equipment owned or used by communication networks,
29 electric generating systems, transmission and distribution
30 systems, gas distribution systems, or water pipelines; and
31 related support facilities that serve multiple persons which
32 include, but are not limited to, buildings, offices, power and
33 communication lines and poles, pipes, structures, and equipment.

34 4. "Mutual aid agreement" means an agreement to which one
35 or more business entities are parties and under which a public
36 utility, municipally owned utility, electric cooperative, or
37 joint agency owning, operating, or owning and operating
38 infrastructure used for electric generation, transmission, or
39 distribution in this state may request that an out-of-state
40 business perform work in this state in anticipation of a
41 disaster or an emergency.

42 5. "Out-of-state business" means a business entity that:

43 a. Does not have a presence in this state, except with



Amendment No. 1

44 respect to the performance of emergency-related work, and
45 conducts no business in this state, and whose services are
46 requested by a registered business or by a unit of state or
47 local government for purposes of performing emergency-related
48 work in this state; and

49 b. Is not registered and does not have tax filings or
50 presence sufficient to require the collection or payment of a
51 tax in this state during the tax year immediately before the
52 disaster-response period. The term also includes a business
53 entity that is affiliated with a registered business solely
54 through common ownership.

55 6. "Out-of-state employee" means an employee who does not
56 work in this state, except for emergency-related work during a
57 disaster-response period.

58 7. "Registered business" means a business entity that is
59 registered to do business in this state before the disaster-
60 response period begins.

61 (b) PROCEDURES FOR OUT-OF-STATE BUSINESSES AND EMPLOYEES.-

62 1. Notwithstanding any other law, an out-of-state business
63 that is conducting operations within this state during a
64 disaster-response period solely for purposes of performing
65 emergency-related work or pursuant to a mutual aid agreement is
66 not considered to have established a level of presence that
67 would require that business to register, file, and remit state
68 or local taxes or fees or require that business to be subject to
69 any registration, licensing, or filing requirements in this



Amendment No. 1

70 state. For purposes of any state or local tax on or measured, in
71 whole or in part, by net or gross income or receipts, the
72 activity of the out-of-state business conducted in this state
73 during the disaster-response period must be disregarded with
74 respect to any filing requirements for such tax, including the
75 filing required for a consolidated group of which the out-of-
76 state business may be a part. This includes the following:

77 a. Reemployment assistance taxes.

78 b. State or local professional or occupational licensing
79 requirements or related fees.

80 c. Local business taxes.

81 d. Taxes on the operation of commercial motor vehicles.

82 e. Corporate income tax.

83 f. Tangible personal property tax and use tax on equipment
84 that is brought into the state by the out-of-state business,
85 used by the out-of-state business only to perform emergency-
86 related work during the disaster-response period, and removed
87 from the state by the out-of-state business following the
88 disaster-response period.

89 2. Notwithstanding any other law, an out-of-state employee
90 whose only employment in this state is for the performance of
91 emergency-related work or pursuant to a mutual aid agreement
92 during a disaster-response period is not required to:

93 a. Register, file, or remit state or local taxes.

94 b. Comply with state or local occupational licensing
95 requirements or related fees.



Amendment No. 1

96 (c) OBLIGATIONS AFTER DISASTER-RESPONSE PERIOD.--An out-of-
97 state business or out-of-state employee who remains in this
98 state after the disaster-response period is not entitled to the
99 procedures provided in this section for activities performed
100 after the disaster-response period ends and is subject to the
101 state's normal standards for establishing presence or residency
102 or doing business in the state.

103 Section 2. This act shall take effect upon becoming law.

104

105

106

T I T L E A M E N D M E N T

107

Remove everything before the enacting clause and

108

insert:

109

An act relating to emergency management; amending s. 213.055,

110

F.S.; defining terms; providing exemptions from certain

111

registration and licensing requirements and taxes for out-of-

112

state businesses and employees who enter the state in response

113

to a disaster or an emergency; specifying the applicability of

114

certain transaction taxes and fees; specifying the obligations

115

of an out-of-state business or employee after the disaster-

116

response period; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1427 Sports Franchise Facilities
SPONSOR(S): Avila
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Lukis AL	Duncan <i>pedd</i>
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Florida is home to many professional and semi-professional sport franchises. Some of these franchises have facilities located on land leased from a local government; some have facilities on land which they previously purchased from a local government.

The bill creates a new section of law and provides the following:

- A sports franchise may not construct, reconstruct, renovate, or improve a facility on public land leased from the state or a political subdivision thereof.
- Any sale of public land by the state or a political subdivision thereof for a sports franchise to construct, reconstruct, renovate, or improve a facility on such land must be at fair market value.

The bill defines "sports franchise" and "facility":

- "Sports franchise" means a professional or semi-professional sports franchise, including, but not limited to, a franchise of the National Football League, the National Hockey League, the National Basketball Association, the National League or American League of Major League Baseball, Minor League Baseball, Major League Soccer, the North American Soccer League, the Professional Rodeo Cowboys Association, the promoter or host of a signature event administered by Breeders' Cup Limited, or the promoter of a signature event sanctioned by the National Association for Stock Car Auto Racing.
- "Facility" means a structure, and its adjoining parcels of land, primarily used to host games or events held by a sports franchise.

The bill may have an indeterminate negative fiscal impact on local governments.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Sports and Facilities

Many professional and semi-professional sports organizations and facilities reside in Florida. With respect to professional sports, Florida is home to professional football, basketball, baseball, hockey, and soccer teams and two National Association of Stock Car Racing (NASCAR) sanctioned tracks.¹ Florida also hosts professional golf, tennis, equestrian, and rodeo events. Notably, the Breeder's Cup, Players Championship, and Daytona 500 all take place in Florida, and the Professional Golf Association (PGA) and Ladies Professional Golf Association (LPGA) both are headquartered in Florida.

Additionally, 15 major league baseball teams come to Florida every year for spring training in the state's Grapefruit League.² The teams use 14 spring training facilities, 13 of which are constructed on publicly-owned land.³ The only facility on privately owned land is the Atlanta Braves/ESPN Wide World of Sports complex.⁴

Florida is also home to numerous minor-league and semi-professional sports franchises in various sports.⁵ Florida has many Minor League Baseball teams, three Arena Football League teams,⁶ four North American Soccer League teams,⁷ and two East Coast Hockey League teams.⁸ Most of the facilities that such teams use are located on city or county-owned land.⁹

The following chart displays basic information about Florida's 10 largest professional sports franchises and their facilities.

Franchise	League	Inaugural Season	Home Facility	County	Facility Opened	Land Owner
Miami Dolphins	NFL	1966	Sun Life Stadium	Miami-Dade	1987	South Florida Stadium LLC ¹⁰
Tampa Bay Buccaneers	NFL	1976	Raymond James Stadium	Hillsborough	1998	Hillsborough County ¹¹
Miami Heat	NBA	1988	American Airlines	Miami-Dade	1999	Miami-Dade County ¹²

¹ NASCAR website at http://www.nascar.com/en_us/NASCAR-Tracks.html. (Last visited January 26, 2016.)

² Florida Sports Foundation Website at <http://www.flasports.com/spring-training/>. (Last visited January 26, 2016.)

³ E-mail correspondence received from David Cooper, Office of Economic and Demographic Research, January 26, 2016. (Relaying information received from John Webb, President of the Florida Sports Commission.) E-mail on file with the House Economic Development & Tourism Subcommittee staff.

⁴ *Id.*

⁵ Florida Sports Foundation Director and Facilities Guide, 2014-2015, pgs. 17-25, available at <http://www.flasports.com/sports-development/directory-and-facilities-guide/>. (Last visited January 26, 2016.)

⁶ Arena League Football website at <http://www.arenafootball.com/>. (Last visited January 26, 2016.)

⁷ North American Soccer League website at <http://www.nasl.com/teams>. (Last visited January 26, 2016.)

⁸ East Coast League Hockey website at <http://www.echl.com/>. Last visited January 27, 2016.

⁹ The Florida Everblades (of the East Coast Hockey League) play at the Germain Arena in Lee County, which is privately owned. <http://www.leepa.org/Display/DisplayAccount.aspx?Account=BB00285430>. (Last visited January 27, 2016.)

¹⁰ Miami-Dade County Property Appraiser's Office website: <http://www.miamidade.gov/propertysearch/#/>. (Last visited January 26, 2016.)

¹¹ Hillsborough County Property Appraiser's Office website:

<http://gis.hcpafl.org/propertysearch/#/parcel/basic/18290972800000000010A>. (Last visited January 26, 2016.)

			Arena			
Orlando Magic	NBA	1989	Amway Center	Orange	2010	City of Orlando ¹³
Tampa Bay Lightning	NHL	1992	Tampa Bay Times Forum	Hillsborough	1996	Hillsborough County ¹⁴
Florida Panthers	NHL	1993	BB&T Center	Broward	1998	Broward County ¹⁵
Miami Marlins	MLB	1993	Marlins Park	Miami-Dade	2012	Miami-Dade County ¹⁶
Jacksonville Jaguars	NFL	1995	EverBank Field	Duval	1995	City of Jacksonville ¹⁷
Tampa Bay Rays	MLB	1998	Tropicana Field	Pinellas	1990	St. Petersburg ¹⁸
Orlando City Soccer (Lions)	MLS	2015	Orlando City Stadium	Orange	N/A ¹⁹	Orlando City Soccer Club ²⁰

City and County Authority to Sell and Lease Land

Florida law provides broad authority to cities and counties to conduct governmental functions and render governmental services, except when expressly prohibited by law.²¹

Such authority includes, but is not limited to, certain statutorily enumerated powers and all implied authority necessary to effectively exercise those express powers, including the authority to contract, purchase, lease, sell and exchange real or personal property.²²

¹² Miami-Dade County Property Appraiser's Office website: <http://www.miamidade.gov/propertysearch/#/>. (Last visited January 26, 2016.)

¹³ Orange County Property Appraiser's Office website: <https://www.ocpafl.org/searches/parcelsearch.aspx>. (Last visited January 26, 2016.)

¹⁴ Hillsborough County Property Appraiser's Office website: <http://gis.hcpafl.org/propertysearch/#/parcel/basic/19291952R000010000140A>. (Last visited January 26, 2016.)

¹⁵ Broward County Property Appraiser's Office website: http://www.bcpa.net/RecInfo.asp?URL_Folio=494026070010. (Last visited January 26, 2016.)

¹⁶ Miami-Dade County Property Appraiser's Office website: <http://www.miamidade.gov/propertysearch/#/>. (Last visited January 26, 2016.)

¹⁷ Duval County Property Appraiser's Office website: http://apps.coj.net/PAO_PropertySearch/Basic/Detail.aspx?RE=1308490000. (Last visited January 26, 2016.)

¹⁸ "What is Tropicana Field worth if Tampa Bay Rays Leave? That depends," by Stephen Nohlgren, Tampa Bay Times, February 6, 2015. Available at <http://www.tampabay.com/news/localgovernment/what-is-tropicana-field-worth-if-rays-leave-that-depends/2216781>. (Last visited January 26, 2016.)

¹⁹ For more information about the Orlando City Soccer Stadium, visit <http://www.orlandocitysc.com/stadium>. (Last visited January 26, 2016.)

²⁰ "Orlando Oks stadium-land deal with Orlando City Soccer Club," by Jeff Weiner, Orlando Sentinel, January 25, 2016. Available at <http://www.orlandosentinel.com/news/breaking-news/os-orlando-city-soccer-stadium-vote-20160125-story.html>. (Last visited January 26, 2016.)

²¹ Sections 125.01 and 166.021, F.S.

²² Section 125.01(3)(a) and 166.021(1), F.S. See also Art VIII, s. 2, Fla. Const. (2016).

Counties and municipalities may also offer private entities below-market rate leases or deeds for real property for economic development purposes.²³

Effect of Proposed Changes

The bill creates s. 288.11633, F.S., and provides the following:

- A sports franchise may not construct, reconstruct, renovate, or improve a facility on public land leased from the state or a political subdivision thereof.
- Any sale of public land by the state or a political subdivision thereof for a sports franchise to construct, reconstruct, renovate, or improve a facility on such land must be at fair market value.

The bill defines “sports franchise” and “facility” as follows:

- "Sports franchise" means a professional or semi-professional sports franchise, including, but not limited to, a franchise of the National Football League, the National Hockey League, the National Basketball Association, the National League or American League of Major League Baseball, Minor League Baseball, Major League Soccer, the North American Soccer League, the Professional Rodeo Cowboys Association, the promoter or host of a signature event administered by Breeders' Cup Limited, or the promoter of a signature event sanctioned by the National Association for Stock Car Auto Racing.
- "Facility" means a structure, and its adjoining parcels of land, primarily used to host games or events held by a sports franchise.

B. SECTION DIRECTORY:

Section 1: Creates s. 288.11633, F.S.; providing that a sports franchise may not construct, reconstruct, renovate, or improve a facility on public land leased from the state or a political subdivision thereof; providing that any sale of public land by the state or a political subdivision thereof for a sports franchise to construct, reconstruct, renovate, or improve a facility on such land must be at fair market value; and defining terms.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
The bill could have an indeterminate negative fiscal impact on local governments. For example, a sports franchise that is unable to make necessary improvements or renovations to its facility could lose customers (that pay sales and other taxes and fees).

²³ Sections 125.045(5)(a) and 166.021(8)(e), F.S.
STORAGE NAME: h1427.EDTS.DOCX
DATE: 1/26/2016

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prevents a sports franchise from constructing, reconstructing, renovating, or improving a facility on public land leased from the state or a political subdivision of the state.

Accordingly, the bill would prevent any economic benefit that may have been created from a new sports franchise's facility that would have otherwise existed but for the bill.

Similarly, the bill would prevent any economic benefit that may have been created by a sports franchise that would have otherwise reconstructed, renovated or improved its facility but for the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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 in the percentage of state tax shared with municipalities or counties.

2. Other:

Constitutional Impairment of Contract: Both the United States and Florida Constitutions provide that legislation cannot modify or render unenforceable any existing contract or contract right.²⁴ Accordingly, the bill's provisions may only apply prospectively: the bill would not be able to affect an existing lease or other agreement between a sports franchise and the state or a subdivision thereof.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The meaning of the terms "renovate" and "improve" are unclear.

It is also unclear how the bill would affect a sports franchise that is mandated by some other law or regulation to update or "improve" its facility for safety reasons.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²⁴ United States Constitution, Art. I, Sec. 10, and Florida Constitution, Art.I, Sec. 10.

1 A bill to be entitled
 2 An act relating to sports franchise facilities;
 3 creating s. 288.11633, F.S.; prohibiting a sports
 4 franchise from constructing, reconstructing,
 5 renovating, or improving a facility on leased public
 6 land; requiring that any sale of public land for a
 7 sports franchise facility be at fair market value;
 8 defining the terms "sports franchise" and "facility";
 9 providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Section 288.11633, Florida Statutes, is created
 14 to read:

15 288.11633 Sports franchise facilities; lease or sale of
 16 public land.-

17 (1) Notwithstanding any other provision of law:

18 (a) A sports franchise may not construct, reconstruct,
 19 renovate, or improve a facility on public land leased from the
 20 state or a political subdivision thereof.

21 (b) Any sale of public land by the state or a political
 22 subdivision thereof for a sports franchise to construct,
 23 reconstruct, renovate, or improve a facility on such land must
 24 be at fair market value.

25 (2) For purposes of this section, the term:

26 (a) "Sports franchise" means a professional or semi-

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27 | professional sports franchise, including, but not limited to, a
 28 | franchise of the National Football League, the National Hockey
 29 | League, the National Basketball Association, the National League
 30 | or American League of Major League Baseball, Minor League
 31 | Baseball, Major League Soccer, the North American Soccer League,
 32 | the Professional Rodeo Cowboys Association, the promoter or host
 33 | of a signature event administered by Breeders' Cup Limited, or
 34 | the promoter of a signature event sanctioned by the National
 35 | Association for Stock Car Auto Racing.

36 | (b) "Facility" means a structure, and its adjoining
 37 | parcels of land, primarily used to host games or events held by
 38 | a sports franchise.

39 | Section 2. This act shall take effect July 1, 2016.