

CHAPTER 318

LABOR AND INDUSTRY

HOUSE BILL 24-1409

BY REPRESENTATIVE(S) Bird and Sirota, Taggart, Duran, Joseph, Snyder, McCluskie, Amabile;
also SENATOR(S) Bridges and Zenzinger, Kirkmeyer, Hinrichsen, Michaelson Jenet, Priola.

AN ACT

CONCERNING THE FUNDING OF EMPLOYMENT-RELATED SERVICES IN THE STATE THROUGH THE DEPARTMENT OF LABOR AND EMPLOYMENT, AND, IN CONNECTION THEREWITH, MAKING AND REDUCING APPROPRIATIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) In 2009, the unemployment insurance enterprise was created to fund unemployment insurance benefits and administration pursuant to Title III and Title IX of the federal "Social Security Act", as amended;

(b) The employment and training technology fund is part of the unemployment insurance enterprise and funds unemployment administration technology expenses, including automation and modernization;

(c) Employers pay unemployment insurance premiums to fund unemployment insurance benefits. Employers also pay a support surcharge to fund unemployment administration and to support the solvency of the unemployment insurance trust fund.

(d) Since 2009, many unemployment insurance administration expenditures have been outside of the unemployment enterprise and funded through the employment support fund, contrary to the intent of the creation of the unemployment insurance enterprise; and

(e) Establishing the workforce development enterprise will appropriately classify workforce center services under an enterprise. Workforce centers help create a

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

healthy labor force and higher employment rate, which keeps the unemployment insurance trust fund solvent and unemployment insurance premiums low. Businesses and employers who pay the support surcharge would directly benefit from the workforce development enterprise.

SECTION 2. In Colorado Revised Statutes, 8-76-102.5, **amend** (3)(a)(IV) introductory portion as follows:

8-76-102.5. Rates effective upon fund solvency - repeal of prior rates - solvency surcharge - definitions. (3) (a) (IV) The support surcharge rate, which is the rate dedicated to employer support surcharge payments deposited into the employment support fund, the benefit recovery fund, ~~and~~ the employment and training technology fund, ~~AND THE WORKFORCE DEVELOPMENT FUND~~ is calculated using the following support surcharge rate schedule:

SECTION 3. In Colorado Revised Statutes, 8-77-109, **amend** (1)(b), (2)(a)(I)(B), (2)(a)(II)(A), (2)(a.9)(II)(A), (6)(a) introductory portion, and (6)(b); and **repeal** (2)(a)(II)(B) as follows:

8-77-109. Employment support fund - employment and training technology fund - created - uses - repeal. (1) (b) There is hereby established the employment support fund. The fund consists of ~~59.46~~ THIRTY-FIVE percent of the support surcharge rate assessed annually as part of each employer's support surcharge rate payments paid and dedicated to the employment support fund in accordance with section 8-76-102.5 (3)(a)(IV).

(2) (a) (I) (B) To the extent allowed by the United States department of labor employment AND training administration, the state treasurer shall credit ~~18.92~~ NINETEEN percent of each employer's annual support surcharge rate determined pursuant to section 8-76-102.5 (3)(a)(IV) to the benefit recovery fund, up to a maximum of fifteen million dollars each year.

(II) (A) At the end of the 2023-24 state fiscal year AND EACH STATE FISCAL YEAR THEREAFTER, the state treasurer shall credit any money collected pursuant to this section that would cause the balance in the employment support fund to exceed ~~thirty-two~~ SEVEN million ~~five hundred thousand~~ dollars, AS ADJUSTED ANNUALLY FOR THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD OR ITS SUCCESSOR INDEX, EXCLUDING GIFTS, GRANTS, OR DONATIONS, to the ~~unemployment compensation fund~~ EMPLOYMENT AND TRAINING TECHNOLOGY FUND CREATED IN SUBSECTION (2)(a.9)(II)(A) OF THIS SECTION. IF THE EMPLOYMENT AND TRAINING TECHNOLOGY FUND HAS REACHED THE MAXIMUM ALLOWABLE BALANCE PURSUANT TO SUBSECTION (2)(a.9)(II)(A) OF THIS SECTION, THE TREASURER SHALL INSTEAD CREDIT THE MONEY TO THE WORKFORCE DEVELOPMENT FUND CREATED IN SECTION 8-83-107 (4).

(B) ~~At the end of the 2024-25 state fiscal year and each state fiscal year thereafter, the limit on the amount of money in the employment support fund specified in subsection (2)(a)(II)(A) of this section shall be adjusted based on the change in average weekly earnings, as determined in accordance with section 8-73-102 (1), in the immediately preceding state fiscal year, and the state treasurer~~

~~shall credit any amount that exceeds the amount specified in subsection (2)(a)(II)(A) of this section, as adjusted pursuant to this subsection (2)(a)(II)(B), to the unemployment compensation fund.~~

(a.9) (II) (A) The employment and training technology fund, referred to in this subsection (2)(a.9) as the "fund", is created in the state treasury. Notwithstanding any provision of this subsection (2) to the contrary, ~~on and after April 27, 2021~~, the state treasurer shall credit ~~21.62~~ THIRTY-TWO percent of each employer's annual support surcharge rate under section 8-76-102.5 (3)(a)(IV) to the employment and training technology fund. On and after April 27, 2021, and on or before June 30, 2023, if cumulative revenue to the employment and training technology fund equals thirty-one million dollars, less any money transferred to the unemployment compensation fund, no additional money shall be credited to the employment and training technology fund but instead shall be allocated to the unemployment compensation fund. On and after July 1, 2023, any amount collected in a fiscal year in excess of ~~seven~~ THIRTEEN million TWO HUNDRED THOUSAND dollars under this subsection (2)(a.9)(II), AS ADJUSTED ANNUALLY FOR THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD OR ITS SUCCESSOR INDEX, EXCLUDING GIFTS, GRANTS, OR DONATIONS, shall be credited to the fund and then ~~transferred~~ CREDITED to the unemployment compensation fund. Money in the fund shall be used for employment and training automation initiatives established by the director of the division. Money in the fund is subject to annual appropriation by the general assembly for the purposes of this subsection (2)(a.9) and shall not revert to the general fund or any other fund at the end of any fiscal year. The money in the fund is exempt from section 24-75-402. At any time, the money in the employment and training technology fund may be appropriated by the general assembly to the unemployment compensation fund or allocated to the unemployment compensation fund at the discretion of the executive director of the department of labor and employment.

(6) (a) The portion of each employer's support surcharge rate that the employer paid and that is dedicated to the employment support fund pursuant to section ~~8-76-102.5 (3)(a)(IV)~~ 8-77-109 (1)(b), to the benefit recovery fund pursuant to section 8-73-116, TO THE WORKFORCE DEVELOPMENT FUND PURSUANT TO SECTION 8-83-107, and to the employment and training technology fund pursuant to subsection (2)(a.9)(II)(A) of this section:

(b) Any money transferred from the employment support fund, the benefit recovery fund, THE WORKFORCE DEVELOPMENT FUND, or the employment and training technology fund to the unemployment compensation fund pursuant to this section is not used in calculating the employer's experience rate or percent of excess for the standard premium rate schedule.

SECTION 4. In Colorado Revised Statutes, **add** 8-83-107 as follows:

8-83-107. Workforce development enterprise - creation - powers and duties - enterprise fund - fee - legislative declaration - definitions. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) EMPLOYERS IN COLORADO PAY UNEMPLOYMENT INSURANCE PREMIUMS PURSUANT TO STATE LAW;

(b) UNEMPLOYMENT INSURANCE PREMIUMS FUND UNEMPLOYMENT INSURANCE BENEFITS PAID TO COLORADO WORKERS WHO HAVE BECOME UNEMPLOYED THROUGH NO FAULT OF THEIR OWN AND ARE ABLE AND AVAILABLE TO WORK;

(c) PAYING UNEMPLOYMENT BENEFITS DEPLETES COLORADO'S UNEMPLOYMENT COMPENSATION FUND, WHICH IS FUNDED EXCLUSIVELY BY EMPLOYER PREMIUMS;

(d) PROVIDING WORKFORCE DEVELOPMENT SERVICES BENEFITS EMPLOYERS THROUGHOUT COLORADO BY:

(I) HELPING COLORADO WORKERS MORE QUICKLY REGAIN EMPLOYMENT, THEREBY REDUCING THEIR NEED FOR UNEMPLOYMENT BENEFITS AND KEEPING EMPLOYERS' UNEMPLOYMENT PREMIUMS LOWER;

(II) DEVELOPING A MORE QUALIFIED WORKFORCE THAT CAN BETTER MEET THE NEEDS OF COLORADO'S BUSINESSES;

(III) CONNECTING COLORADO EMPLOYERS WITH POTENTIAL EMPLOYEES; AND

(IV) MAINTAINING EMPLOYERS' CUSTOMER BASES BY KEEPING THE GREATEST NUMBER OF PEOPLE STEADILY EMPLOYED AND ABLE TO PURCHASE GOODS AND SERVICES;

(e) THE WORKFORCE DEVELOPMENT ENTERPRISE CREATED IN THIS SECTION PROVIDES VALUABLE BUSINESS SERVICES TO EMPLOYERS BY ENSURING COLORADO WORKERS HAVE ACCESS TO WORKFORCE DEVELOPMENT SERVICES AND ACCESS TO COLORADO'S WORKFORCE DEVELOPMENT CENTERS' SERVICES;

(f) BY PROVIDING THESE SERVICES, THE ENTERPRISE ENGAGES IN AN ACTIVITY CONDUCTED IN THE PURSUIT OF A BENEFIT, GAIN, OR LIVELIHOOD;

(g) CONSISTENT WITH THE DETERMINATION OF THE COLORADO SUPREME COURT IN *NICHOLL V. E-470 PUBLIC HIGHWAY AUTHORITY*, 896 P.2d 859 (COLO. 1995), THE POWER TO IMPOSE TAXES IS INCONSISTENT WITH ENTERPRISE STATUS UNDER SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, AND, THEREFORE, IT IS THE CONCLUSION OF THE GENERAL ASSEMBLY THAT THE REVENUE COLLECTED BY THE WORKFORCE DEVELOPMENT ENTERPRISE IS GENERATED BY FEES, NOT TAXES, BECAUSE THE MONEY CREDITED TO THE ENTERPRISE IS:

(I) FOR THE SPECIFIC PURPOSE OF ALLOWING THE ENTERPRISE TO DEFRAY THE COSTS OF PROVIDING THE SERVICES SPECIFIED IN THIS SECTION; AND

(II) COLLECTED AT RATES THAT ARE REASONABLY CALCULATED BASED ON THE COSTS OF THE SERVICES PROVIDED BY THE ENTERPRISE; AND

(h) SO LONG AS THE ENTERPRISE QUALIFIES AS AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, THE ENTERPRISE'S REVENUE IS NOT STATE FISCAL YEAR SPENDING, AS DEFINED IN SECTION 24-77-102 (17), OR

STATE REVENUES, AS DEFINED IN SECTION 24-77-103.6 (6)(c), AND DOES NOT COUNT AGAINST EITHER THE STATE FISCAL YEAR SPENDING LIMIT IMPOSED BY SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR THE EXCESS STATE REVENUES CAP, AS DEFINED IN SECTION 24-77-103.6 (6)(b).

(2) AS USED IN THIS SECTION:

(a) "ENTERPRISE" MEANS THE WORKFORCE DEVELOPMENT ENTERPRISE CREATED IN SUBSECTION (3) OF THIS SECTION.

(b) "FUND" MEANS THE WORKFORCE DEVELOPMENT FUND CREATED IN SUBSECTION (4) OF THIS SECTION.

(3) THE WORKFORCE DEVELOPMENT ENTERPRISE IS CREATED IN THE DIVISION. THE BUSINESS PURPOSE OF THE ENTERPRISE IS TO ENSURE COLORADO WORKERS HAVE ACCESS TO WORKFORCE DEVELOPMENT SERVICES AND ACCESS TO COLORADO'S WORKFORCE DEVELOPMENT CENTERS. THE WORKFORCE DEVELOPMENT ENTERPRISE CONSTITUTES AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, SO LONG AS IT RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS AND RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL ANNUAL REVENUE IN GRANTS FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT CONSTITUTES AN ENTERPRISE PURSUANT TO THIS SUBSECTION (3), THE ENTERPRISE IS NOT SUBJECT TO SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(4) THE WORKFORCE DEVELOPMENT FUND IS CREATED IN THE STATE TREASURY. MONEY IN THE FUND SHALL BE USED BY THE WORKFORCE DEVELOPMENT ENTERPRISE TO ENGAGE IN AND SUPPORT EMPLOYMENT AND TRAINING WORKFORCE INITIATIVES THROUGHOUT COLORADO. THE WORKFORCE DEVELOPMENT ENTERPRISE MAY DEPOSIT OR PERMIT OTHERS TO DEPOSIT OTHER MONEY INTO THE WORKFORCE DEVELOPMENT FUND. THE WORKFORCE DEVELOPMENT FUND CONSISTS OF THE FOLLOWING:

(a) FOURTEEN PERCENT OF THE SUPPORT SURCHARGE COLLECTED PURSUANT TO SECTION 8-76-102.5 (3)(a)(IV);

(b) ANY MONEY APPROPRIATED TO THE FUND BY THE GENERAL ASSEMBLY;

(c) ANY MONEY GRANTED TO THE ENTERPRISE FROM A FEDERAL AGENCY FOR WORKFORCE DEVELOPMENT PURPOSES;

(d) ANY MONEY FROM BONDS ISSUED PURSUANT TO SUBSECTION (6) OF THIS SECTION; AND

(e) ANY GIFTS, GRANT, DONATIONS, OR OTHER MONEY RECEIVED BY THE ENTERPRISE.

(5) THE ENTERPRISE MAY ENGAGE THE SERVICES OF CONTRACTORS AND CONSULTANTS, INCLUDING THE DEPARTMENT OF LABOR AND EMPLOYMENT AND THE ATTORNEY GENERAL'S OFFICE, FOR PROFESSIONAL AND TECHNICAL ASSISTANCE AND

ADVICE AND TO SUPPLY OTHER SERVICES RELATED TO CONDUCTING THE AFFAIRS OF THE ENTERPRISE.

(6) (a) THE ENTERPRISE IS AUTHORIZED TO ISSUE REVENUE BONDS FOR THE EXPENSES OF THE ENTERPRISE, WHICH BONDS MAY BE SECURED BY ANY REVENUES OF THE ENTERPRISE. REVENUE FROM THE BONDS ISSUED PURSUANT TO THIS SUBSECTION (6)(a) SHALL BE DEPOSITED INTO THE FUND.

(b) THE BOARD OF DIRECTORS FOR THE ENTERPRISE IS AS FOLLOWS:

(I) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE;

(II) THE DIRECTOR OF THE COLORADO WORKFORCE DEVELOPMENT COUNCIL OR THE DIRECTOR'S DESIGNEE; AND

(III) TEN MEMBERS, ONE REPRESENTING EACH LOCAL WORKFORCE COUNCIL, APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT.

(c) THE BOARD HAS THE FOLLOWING POWERS AND DUTIES:

(I) TO SUPERVISE THE ENTERPRISE;

(II) TO ISSUE REVENUE BONDS;

(III) TO ACQUIRE, HOLD TITLE TO, AND DISPOSE OF REAL AND PERSONAL PROPERTY AS NECESSARY IN THE EXERCISE OF THE BOARD'S POWERS AND PERFORMANCE OF THE BOARD'S DUTIES;

(IV) TO ENTER INTO AGREEMENTS WITH THE DEPARTMENT;

(V) TO REQUEST THE STATE TREASURER TO ACT AS ADVISOR TO THE FUND TO ISSUE SUCH BONDS AND NOTES AS ARE NECESSARY TO MAINTAIN ADEQUATE BALANCES IN THE FUND; AND

(VI) TO HAVE AND EXERCISE ALL RIGHTS AND POWERS NECESSARY OR INCIDENTAL TO OR IMPLIED FROM THE SPECIFIC POWERS AND DUTIES GRANTED BY THIS SECTION.

(7) EXCEPT AS PROVIDED IN SUBSECTION (9) OF THIS SECTION, THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE WORKFORCE DEVELOPMENT FUND TO THE FUND. MONEY IN THE FUND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND AT THE END OF THE FISCAL YEAR.

(8) THE GENERAL ASSEMBLY SHALL APPROPRIATE THE MONEY IN THE WORKFORCE DEVELOPMENT FUND ANNUALLY TO THE ENTERPRISE.

(9) (a) AT THE END OF THE 2024-25 STATE FISCAL YEAR, IF THE AMOUNT IN THE FUND EXCEEDS SIX MILLION EIGHT HUNDRED THOUSAND DOLLARS, THE STATE TREASURER SHALL TRANSFER THE MONEY IN THE FUND IN EXCESS OF SIX MILLION

EIGHT HUNDRED THOUSAND DOLLARS TO THE UNEMPLOYMENT COMPENSATION FUND CREATED IN SECTION 8-77-101 (1).

(b) AT THE END OF THE 2025-26 STATE FISCAL YEAR, AND EACH STATE FISCAL YEAR THEREAFTER, IF THE AMOUNT IN THE FUND EXCEEDS SIX MILLION EIGHT HUNDRED THOUSAND DOLLARS, AS ADJUSTED FOR THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD OR ITS SUCCESSOR INDEX, THE STATE TREASURER SHALL CREDIT ANY MONEY COLLECTED PURSUANT TO THIS SECTION THAT WOULD CAUSE THE BALANCE IN THE FUND TO EXCEED THE ADJUSTED AMOUNT TO THE UNEMPLOYMENT COMPENSATION FUND CREATED IN SECTION 8-77-101 (1).

SECTION 5. Appropriation - adjustments to 2023 long bill. (1) To implement this act, appropriations made in the annual general appropriation act for the 2023-24 state fiscal year to the department of labor and employment are adjusted as follows:

(a) The cash funds appropriation from the employment support fund created in section 8-77-109 (1)(b), C.R.S., for program costs related to the division of unemployment insurance is decreased by \$10,457,137;

(b) The cash funds appropriation from the employment and training technology fund created in section 8-77-109 (2)(a.9)(II)(A), C.R.S., for program costs related to the division of unemployment insurance is increased by \$10,457,137;

(c) The cash funds appropriation from the employment support fund created in section 8-77-109 (1)(b), C.R.S., for state operations and program costs related to the division of employment and training is decreased by \$3,669,974, and the related FTE is decreased by 57.4 FTE;

(d) The cash funds appropriation from the workforce development fund created in section 8-83-107 (4), C.R.S., for workforce center program costs related to the workforce development enterprise in the division of employment and training is increased by \$3,669,974. This is based on an assumption the division will require an additional 57.4 FTE.

(e) The cash funds appropriation from the employment support fund created in section 8-77-109 (1)(b), C.R.S., for one-stop workforce center contracts related to the division of employment and training is decreased by \$9,829,126;

(f) The anticipated federal funds for one-stop workforce center contracts related to the division of employment and training is decreased by \$11,031,925, and the related FTE is decreased by 36.0 FTE. This figure is subject to the "(I)" notation as defined in the annual general appropriation act for the 2023-24 state fiscal year.

(g) The anticipated federal funds from the workforce innovation and opportunity act related to the division of employment and training is increased by \$11,031,925, and the related FTE is increased by 36.0 FTE. This figure is subject to the "(I)" notation as defined in the annual general appropriation act for the 2023-24 state fiscal year.

(h) (I) The cash funds appropriation from the SPARC program fund created in section 24-46.3-505 (1), C.R.S., for state operations and program costs related to the division of employment and training is increased by \$68,513; and

(II) The cash funds appropriation from the SPARC program fund created in section 24-46.3-505 (1), C.R.S., for one-stop workforce center contracts related to the division of employment and training is decreased by \$68,513; and

(i) The cash funds appropriation from the workforce development fund created in section 8-83-107 (4), C.R.S., for workforce center program costs related to the workforce development enterprise in the division of employment and training is increased by \$9,829,126.

SECTION 6. Appropriation. For the 2024-25 state fiscal year, \$14,003,304 is appropriated to the department of labor and employment for use by the division of employment and training. This appropriation is from the workforce development fund created in section 8-83-107 (4), C.R.S., and is based on an assumption the division will require an additional 57.4 FTE. To implement this act, the division may use this appropriation for workforce center program costs related to the workforce development enterprise.

SECTION 7. Effective date. This act takes effect June 15, 2024.

SECTION 8. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

Approved: May 31, 2024