

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2588/2dn

JTK:eev:ev

July 31, 2013

Representative Knodl:

This redraft adjusts the proposed rewording of s. 108.02 (15) (k) 16., stats., so that it is substantively different than the corresponding provision in the Federal Unemployment Tax Act (FUTA), 26 USC 3508 (b) (2).

Under both the draft and FUTA, the exclusion from UI coverage only applies if the affected employee's employment contract provides that the services to be performed by the employee are not subject to federal unemployment taxes. Under this redraft it is possible that services would be taxed under federal law but not under state law. However, both exclusions would nevertheless be subject to this proviso. This could have the effect of negating the changes made in the redraft to the extent that they are not interpreted in the same way that the IRS interprets FUTA.

Normally, unless a state is subject to additional assessments resulting from federal loans, employment that is covered under FUTA (26 USC 3301) is subject to a federal tax of 6.0 percent on the first \$7,000 of annual taxable wages paid to an employee. FUTA (26 USC 3302) permits a credit of up to 5.4 percent against this tax for unemployment taxes that were paid, or but for an employer's favorable layoff experience, would be payable to this state on these same wages. As a result, if any employment excluded under s. 108.02 (15) (k) 16., stats., is not similarly excluded under FUTA, an employer affected by the exclusion could forfeit its federal tax credit on that employment, and if the employer has a favorable layoff experience, the employer could be required to pay increased federal taxes on the state-excluded employment as compared to the taxes that would be payable under current law.

Please let me know if you would like to discuss these issues further.

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