



**House
Legislative
Analysis
Section**

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**UNEMPLOYMENT INSURANCE/MESC
RECEIVED**

Senate Bill 466 as passed by the Senate
Sponsor: Sen. John D. Cherry

MAR 05 1990

Senate Bill 640 as passed by the Senate
Sponsor: Sen. Doug Carl

Senate Bill 641 as passed by the Senate
Sponsor: Sen. Doug Cruce

Senate Bill 644 as passed by the Senate
Sponsor: Sen. David Holmes

Senate Bill 645 as passed by the Senate
Sponsor: Sen. Robert Geake

Senate Committee: Human Resources and Senior
Citizens
House Committee: Labor

First Analysis (11-27-89)

THE APPARENT PROBLEM:

Under the cosponsorship of the House Labor and the Senate Human Resources and Senior Citizens committees, and with the support of the Departments of Commerce and Labor and the Michigan Employment Security Commission (MESC), an ad hoc committee, consisting of representatives from the business and labor communities, met with the legislature in recent months to reach agreement on various issues concerning Michigan's unemployment insurance system. The committee, which came to be known as the Ad Hoc Group on Unemployment Insurance Administration, identified several problems and made the following recommendations in a report to the governor:

Negative Balance Employers. The Michigan Employment Security Act provides that, if an employer's negative balance equals or exceeds \$100,000 and that balance equals or exceeds 300 percent of the employer's taxable payroll (or total payroll if the employer is a construction employer), the employer is required to pay an amount equal to the negative balance by the end of the calendar year. When this provision was enacted in December 1982, some apparently believed it was the intent of the legislature that the provision be used by the MESC to make employers who leave the state accountable for any large negative balances in their unemployment compensation experience accounts. The commission proposed an administrative rule in 1983 to implement the provision according to the assumed intent and submitted the rule to the attorney general for approval. The attorney general denied approval, citing questions of legality. The MESC, therefore, annually has waived the requirement that employers pay off any large negative balances — an option that the MESC is allowed to exercise under the act. Some believe that it is doubtful that any MESC rule to implement what is purported to be the intent of the legislature would receive approval from the attorney general, and recommend that the negative balance payoff requirement be repealed.

Nonprofit Reimbursing Employers. Reimbursing employers do not pay unemployment insurance taxes, but rather are

obligated to reimburse the unemployment insurance trust fund for benefits paid by the fund to their employees. Employers eligible for reimbursing status are state and local governments, school districts, and nonprofit entities. According to "A Report to the Governor on Unemployment Insurance Administration," submitted by the directors of the Departments of Labor and Commerce, November 10, 1988, there are currently 25 delinquent reimbursement collection accounts totaling \$2,664,489. Of this amount, 61 percent was owed by five nonprofit employers, four of whom are considered to be "uncollectable" since they have filed for bankruptcy as "no asset" cases. An audit of the Unemployment Insurance Trust Fund revealed a "continuing problem with reimbursing nonprofit employers who fail to reimburse the fund for benefits paid to their former employees." The situation is compounded by the fact that the nonprofit employers are not required to file any security to become reimbursing employers. Some have recommended that, to avoid a future monetary drain on the trust fund, all nonprofit employers who elect to be reimbursing employers should post a surety bond or other type of security. On the other hand, some also have suggested that the MESC be given greater flexibility in working with current delinquent employers to help them pay off their obligation to the fund. Currently, the MESC has only two choices for handling delinquent nonprofit reimbursing employers: require them to file a surety bond to secure their obligation, or terminate their status as reimbursing employers. Some maintain that these methods of handling delinquencies do not necessarily guarantee that the employers' obligations to the fund will be met. In some cases, they say, a surety bond can cost the employer almost as much as the employer's obligations to the fund, and revoking an employer's reimbursing status will not necessarily enable the employer to meet his or her obligations any sooner or with any less difficulty. It has been suggested, therefore, that the MESC be given the third option of requiring delinquent employers to file irrevocable letters of credit or other security to protect the interests of the fund.

Fraud Control. According to the above report submitted to Governor Blanchard by the directors of the Departments of Labor and Commerce, fraud in the unemployment insurance program can occur in both the collection of taxes and the payment of benefits. Employers may seek to avoid paying unemployment taxes or to reduce the amount they pay by agreeing to lay off workers, who then draw benefits while continuing to work without wages; by under-reporting wages; or through neglecting to inform a buyer of the business' outstanding unemployment tax liabilities. Claimants may seek to establish or continue claims for which they are not eligible, or they may attempt to increase the amount of benefits they receive by failing to report earnings they receive while collecting benefits; by falsifying reports of efforts to find work; by not reporting refusal of work; or by reporting nonexistent dependents. During a fraud detection process initiated October 1, 1988, the Departments of Labor and Commerce investigated claimant fraud. MESC instituted a cross match of wage record information collected for the Income Eligibility and Verification System (IEVS) with claimant records. The program matched the unemployment insurance claimant file against employer reported wage records and permitted MESC to identify potential fraud involving claimants' non-reporting or under-reporting of earnings while collecting benefits. The period chosen for the cross match was the quarter ending June 30, 1988. Requests were sent to employers for wage verification of 21,000 claims filed in that period, and from 16,000 responses received, MESC branch offices reviewed 2,000 cases that showed potential for overpayment. Nine hundred cases of overpayment — or less than one-half of one percent of the total claims — were found; of these, 600 were found to be unintentional, and the remainder intentional; restitution was sought for the \$767,000 paid out in overpayments. Although the MESC reportedly devotes substantial resources to fraud detection programs, some feel that these programs would be more effective if they were consolidated into a new fraud control program (instead of their current housing in three different bureaus in the Department of Labor) and if improvements were made to the data processing system to support the new program.

MESC Computer Project. According to many sources, the automation of Michigan's unemployment insurance system, which was funded in large part by a solvency tax that was imposed on negative balance employers, has been plagued by massive cost overruns and poor performance and problems some attribute to mismanagement and insufficient accountability within the MESC. A new computer system that reportedly will improve and expand the capacity of the current system is being developed, and it has been suggested that, in addition to providing financial support for the needed improvements, efforts be made to ensure that staff are adequately trained in the use of the new system and that there is sufficient oversight of this new computer project to avoid future complications.

MESC Detroit Offices. Apparently, in the course of inspecting various office sites to determine where to house the MESC computer system, inspectors from the Bureau of Construction Codes discovered that the 70-year-old building in Detroit, in which MESC headquarters are located, is in need of structural improvements to bring it into compliance with building codes. The building's elevator, for example, apparently must be modernized, provisions must be made for fire suppression and alarm

systems, and various structural and weatherizing improvements, including caulking windows and patching the building facade, must be made before the building can be considered adequate to house the new computer system.

THE CONTENT OF THE BILLS:

The bills would amend the Michigan Employment Security Act to require that nonprofit reimbursing employers file a surety bond, letter of credit, or other security with the MESC; to delete requirements that certain negative balance employers pay their negative balance by the end of a calendar year; and to appropriate money for computer system improvement and expansion project and staff training, for improvements to the MESC Detroit offices, and for fraud control systems.

Senate Bill 466. Currently, under the act, the MESC may require a nonprofit reimbursing organization that has become delinquent to file and execute a surety bond to secure its obligations, or may terminate the organization as a reimbursing employer. Under the bill, the MESC could require delinquent nonprofit reimbursing organizations to file an irrevocable letter of credit or other security that the MESC had approved. A nonprofit organization that elected to become a reimbursing employer on or after the effective date of the bill would also be required to file and execute a surety bond or an irrevocable letter of credit or other security that the MESC had approved. The requirements would not apply to any nonprofit reimbursing employer who paid \$100,000 or less remuneration per year for employment.

MCL 421.13a et al.

Senate Bill 640. Currently, an employer whose negative balance equals or exceeds \$100,000, and if the balance equals or exceeds 300 percent of the employer's taxable payroll (or total payroll, in the case of a construction employer), the employer is required to pay the MESC an amount equal to the negative balance by the end of the calendar year. The negative balance due is subject to interest, penalty, assessment and collection requirements, and the MESC is granted the discretion of determining the manner of the payment and of cancelling any part of the negative balance due. Negative balance amounts paid to the MESC are paid into the unemployment compensation fund and credited to the employer's experience account, and the amount of a negative balance that is cancelled is restored to the employer's experience account. Senate Bill 640 would delete these provisions.

MCL 421.19

Senate Bill 641. Under the bill, the \$19.45 million that, under Senate Bill 646, would be appropriated from the penalty and interest account in the contingent fund for the fiscal year ending September 30, 1990, would be expended for continuing work on the MESC computer system improvement and capacity expansion project. The bill would require that \$1 million of this amount be used for training staff in use of the improved computer system. In addition, the MESC would be required to appoint a computer project oversight committee of up to 15 members which would be composed of computer system specialists from the private sector and MESC employees involved in the project. The committee would be required to review MESC staff reports on the status of the project on a quarterly basis, and to provide a short written summary report on the review, including its comments, to the MESC, the Department of Management and Budget, and the

Senate and House Labor and Appropriations subcommittees on Regulatory Affairs. The committee, upon request, would also be required to serve in an advisory capacity to the commission. The appropriation provided for in the bill would be considered a work project and would not lapse at the end of the fiscal year but would continue to be available for expenditure. Unexpended funds remaining at the end of three years after the effective date of the bill would revert to the MESC Penalty and Interest Account in its contingent fund. (Note: The bill specifies that the appropriation be considered a work project which would not lapse at the end of the fiscal year, but which would continue until the project is completed. The bill also specifies that after three years any funds from the appropriation that are not expended will revert to the penalty and interest account. The language apparently does not address the conflict that could occur if the project was not completed in the three-year period.)

MCL 421.6b

Senate Bill 644. The bill would appropriate \$2.7 million from the penalty and interest account in the contingent fund for the fiscal year ending September 30, 1990, to fund improvements in the MESC Detroit offices. With the approval of the MESC, \$950,000 would be spent for elevator modernization, \$1.2 million for fire suppression and alarm systems, and \$550,000 for exterior and other repairs. The appropriation would be considered a work project and would not lapse at the end of the current fiscal year, but would continue to be available for expenditure until the project was completed.

MCL 421.6f

Senate Bill 645. The bill would appropriate \$425,000 from the penalty and interest account in the contingent fund for the fiscal year ending September 30, 1990, to be used by the MESC to secure automated systems for the fraud control and collections division. The bill would also require that the MESC operate an increased fraud control and investigation program that would be funded in the amount of \$1 million annually from the penalty and interest account. The \$425,000 appropriation would be considered a work project and would not lapse at the end of the fiscal year, but would continue to be available for expenditure until the project was completed.

MCL 421.6g

The bills are tie-barred to each other and to the following bills, which are the remainder of the 14-bill package:

- Senate Bill 68. The bill would amend the Michigan Employment Security Act to provide for a pro rata repayment to employers of \$21 million from excess solvency tax revenues. The Michigan Employment Security Commission (MESC) would be required to make a good faith effort to locate each employer eligible for receipt of a payment. Payment would be made within six months after the effective date of the bill. The bill would also require legislative approval of deposits and expenditures from the administrative fund and would delete language that permits solvency tax revenues to be used for the unemployment insurance automation project.
- Senate Bill 646 would make a supplemental appropriation for the MESC for fiscal year 1989-90.
- House Bill 4815. Under the act, it is a misdemeanor for an employer to make a false statement or misrepresent facts for the purpose of obtaining or increasing a benefit, or avoiding making payments required under the act.

Under the bill, it would be a felony for an employer to require a person, as a condition of employment, to make a false statement or misrepresent facts in order to obtain or increase a benefit or to avoid or reduce a contribution or other payment required under the act. The felony would be punishable by imprisonment for ten years, a fine of not more than \$5,000, or both.

- House Bill 5222. The bill would require that MESC finalize an emergency backup plan for its current computer system within six months of the effective date of the bill. The plan would be funded in the amount of \$1.5 million from a reserve to be established in the penalty and interest account in the contingent fund. Under the bill, an emergency would exist when the commission determined by majority vote that it would be unable to service claimants or employers on a statewide, regional, or local basis over a prolonged period of time. The emergency plan would be not required after the commission determined that the computer system improvement and capacity expansion project was fully operational, or 36 months after the effective date of the bill, whichever occurred first.
- House Bill 5223. Within six months after the effective date of the bill, MESC would be required to establish a claimant and employer advocacy program to provide information, consultation, and representation services relating to the referee or board of review appeal levels, or both. The program would be funded from the contingent fund from interest on contributions, as well as penalties and damages. For fiscal year 1989-90, \$5 million would be appropriated, of which not more than \$500,000 could be expended, and the maximum amount of expenditure for each of the subsequent three fiscal years could not exceed \$1.5 million per year. The commission would also be required to develop standards for individuals providing advocacy assistance services (under the bill, these services could be supervised by, but not be provided by, MESC or state employees). Note: Under the bill, the advocacy assistance program could not commence until \$21 million in excess solvency taxes for 1983, 1984, and 1985 is refunded to employers, as proposed in Senate Bill 68. Similarly, the payments required under Senate Bill 68 could not be made until the advocacy assistance program had been approved by the commission.
- House Bill 5224. Currently, an unemployed individual is eligible to receive benefits only if he or she registers at an employment office that he or she is seeking and is available to perform suitable full-time work. These requirements may be waived by MESC if the individual is laid off and the employer notifies the commission in writing that the layoff is temporary. Under the bill, the employer could also notify the commission by computerized data exchange.
- House Bill 5226. The bill would amend the act to require MESC to operate an employee training program to provide more effective service to claimants and employers. The program would be funded by an annual appropriation of \$1 million from the penalty and interest account in the contingent fund.
- House Bill 5227. The bill would require the transferor of a business to disclose to the transferee certain information pertaining to the transferor's unemployment tax liability and experience. Under the bill, failure to provide accurate information would be a misdemeanor punishable by imprisonment for not more than 90 days, a fine of not more than \$2,500, or both. The seller, or the seller's agent, would also be liable for any consequential damages resulting from failure to comply,

although the agent would not be liable if he or she exercised good faith in complying with the disclosure of information.

- **House Bill 5229.** Under the bill, a reserve would be established in MESC Penalty and Interest Account to establish a \$3.5 million Stabilization Fund. The fund would offset the effects on state budgeted staffing levels of unanticipated cuts in federal administrative funds, and could be drawn upon when authorized by a majority of the commission. Expenditures from the fund would be authorized by MESC by an affirmative majority vote. The appropriation would be considered a work project and would not lapse at the end of the fiscal year, but would continue to be available for expenditure until the project was completed.

FISCAL IMPLICATIONS:

According to Michigan Employment Security Commission and Department of Labor estimates, all costs incurred by the bills would come from the MESC Penalty and Interest Account (an account that collects fees from employers who do not pay unemployment insurance bills on time, or who violate some other regulation) in its contingent fund. The bills would have no effect on general funds. The Penalty and Interest Account balance was reported at \$30.7 million as of October 1, 1989, and it is estimated that about \$6.5 million will be received by the account each year.

The following outlines the cost of each bill in the package:

Bill No.	Description	Cost (In Millions)
S.B. 466	Surety Bonds	None
S.B. 641	Upgrade Computer	18.450
	Staff Computer Training	1.000
	Headquarters Safety Improvements:	
S.B. 644	Elevator Modernization	0.950
	Fire Suppression and Alarms	1.200
	Exterior Repairs	0.550
	Fraud Control:	
S.B. 645	Automated Systems	0.425
	Staff	1.000
H.B. 4815	Employer Fraud	None
H.B. 5222	Emergency Plan	1.500
H.B. 5223	Advocacy Assistance	5.000
H.B. 5224	Computerized Data Exchange	None
H.B. 5226	Employee Training	1.000
H.B. 5227	Successorship Liability	None
H.B. 5229	Stabilization Fund	3.500
	Total MESC Contingent Funds	\$34.575
S.B. 68	Solvency Tax Distribution	21.000
	Total Appropriation	\$55.575

Note: Senate Bill 646 would provide for a separate fiscal year 1989-90 supplemental appropriation of \$57.575 million from the MESC Penalty and Interest Account in its contingent fund to implement the above package of bills.

ARGUMENTS:

For:

Senate Bill 641 would permit work to start on a new MESC computer system. A 1986 independent audit requested by Governor Blanchard noted that MESC has been beset with many problems — many of them not of its own making, nor within its power to correct. MESC's computer system went on line in stages in 1984 and 1985. It was supposed to improve unemployment fund collections from employers, reduce long lines at the 53 local MESC offices by speeding benefit payments, and keep better records. Instead, state

officials say the computer frequently breaks down and delays payment of unemployment claims; bugs in the computer have also resulted in overcharges of millions of dollars in taxes to businesses. Thousands of automobile workers, laid off during the industry's annual "model changeover" period, have waited for unemployment checks for an average of five weeks for each of the last three years. The new computer — which would use about \$50 million in software saved from the old system — would be much faster, and could handle four times as many claims as the botched system.

For:

Senate Bill 466 would require future nonprofit organizations who elect to become reimbursing employers to demonstrate their financial responsibility by filing a surety bond or other type of security, and should protect the unemployment insurance trust fund from further depletion by delinquent reimbursing employers.

Against:

To ensure proper oversight of the new MESC computer system, the oversight committee should be selected by the legislature, not the MESC.

POSITIONS:

The facilitators and conveners of the ad hoc group that developed the package of bills, the Economic Alliance for Michigan, testified before the House Labor Committee that there is a broad based acceptance of the bills by the group, which consisted of representatives of the following agencies and companies:

The Michigan State Chamber of Commerce

General Motors Corporation

K-Mart Corporation

The Michigan Retailers Association

The Michigan Merchants Council

Michigan State AFL-CIO

The Michigan Manufacturers Association

The UAW

Employers' Unemployment Compensation Council

Associated General Contractors of America—Michigan Chapter

The Small Business Association of Michigan

The Michigan Building Trades Council

Automotive Moulding Company

The Department of Commerce

The director of the Michigan Employment Security Commission Public Information Office in the Department of Labor, representing the governor

HOUSE LEGISLATIVE ANALYSIS SECTION

Senate Bill 466

Analysis Second

See HB 4815