



**House  
Legislative  
Analysis  
Section**

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**UNEMPLOYMENT COMPENSATION REFORM**

**RECEIVED**

**House Bill 4815 (Substitute H-3)**

**Sponsor: Rep. Juanita Watkins**

**NOV 22 1989**

**House Bill 5222 with committee amendment**

**Sponsor: Rep. Ed Giese**

**Mich. State Law Library**

**House Bill 5223 with committee amendment**

**Sponsor: Rep. Juanita Watkins**

**House Bill 5224 with committee amendment**

**Sponsor: Rep. Roland Niederstadt**

**House Bill 5226 with committee amendment**

**Sponsor: Rep. Nick Ciaramitaro**

**House Bill 5227 with committee amendment**

**Sponsor: Rep. Walter DeLange**

**Committee: Labor**

**House Bill 5229 with committee amendment**

**Sponsor: Rep. Morris W. Hood**

**Committee: Appropriations**

**Senate Bill 68 (Substitute H-5)**

**Sponsor: Sen. Fred Dillingham**

**Senate Committee: Human Resources and Senior  
Citizens**

**House Committee: Appropriations**

**First Analysis (10-30-89)**

**H.B. 4815, et al (10-30-89)**

***THE APPARENT PROBLEM:***

Although many changes were made in the Michigan Employment Security Act in recent years, Michigan's unemployment insurance system has been plagued with new problems. In 1988, at the direction of Governor Blanchard, the directors of the Departments of Labor and Commerce conducted a study of the system at labor department round tables and commerce department public hearings throughout the state. The departments subsequently issued a report on their findings. Included in the report's recommendations for improvement were the following:

- Refund the residual balance in the Solvency Tax Account to negative balance employers based upon their pro rata share of solvency taxes paid.
- Establish a central fraud control unit to crack down on employer and claimant abuses.
- Require that information about all tax liabilities owed by a business be included in the closing documents when that business is sold and require the seller to furnish the buyer with the names of workers laid off by the business within the past 12 months.
- Require that nonprofit reimbursing employers post bonds.
- Enforce the MESC policy that prohibits the same employee from handling both an initial decision of eligibility and benefits and the appeal to that decision.
- Create an MESC customer service office to help businesses and claimants resolve problems, errors, and misunderstandings in a timely and friendly manner, and

establish an MESC policy that all inquiries and requests be responded to within 72 hours.

In addition to the above, the MESC computer system has been plagued with problems since it went on line in 1984, and must be almost completely rebuilt. A state audit of the computer system concluded that blunders by the company the state had hired to administer the project had pushed the computer's cost from the original estimate of \$17 million to \$71 million.

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 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 some of the above recommendations. As a result of these discussions, the coalition proposed a package of legislation that would, with one exception, be funded completely from the MESC Penalty and Interest Account (this account is accrued from payments from employers who are delinquent in meeting their unemployment insurance obligations).

***THE CONTENT OF THE BILLS:***

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

**OVER**

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.

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. 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.

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. Unexpended funds remaining in the reserve account would then revert to the penalty and interest account.

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 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. 60 percent of claimant related costs and not more than 40 percent of employer related costs would be financed from the appropriations. Three years after the services began, the commission would be required to vote on whether to continue the program or not. 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), and to make an annual report to the legislature on the program's operation within 60 days after the program's first anniversary date.

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, under the act, 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 seller of a business, or the seller's real estate broker or other agent, to provide the buyer with an account of the business' outstanding unemployment tax liability, unreported unemployment tax liability, and the tax payments, tax rates, and cumulative benefit charges for the most recent five years, together with a listing of all individuals currently employed and all employees separated from employment in the past twelve months. Under the bill, the form provided to the buyer would also specify such other information, as determined by MESC, as would permit the buyer to estimate future unemployment compensation costs. 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. This remedy would not be exclusive and nothing in the bill could be construed to decrease the liability of the buyer as a successor in interest or to prevent the transfer of a rating account balance.

House Bill 5229. Under the bill, a reserve would be established in MESC's 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.

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The bills are tie-barred to each other and to Senate Bills 466, 640, 641, 644, 645, 646, which would amend the Michigan Employment Security Act as follows:

Senate Bill 466 would amend the act to require nonprofit organizations that elected to become reimbursing employers to file surety bonds. Senate Bill 640 would amend the act to delete the requirement that an employer with a negative balance of \$100,000 or more as of June 30, which is equal to, or exceeds, 300 percent of the total

payroll, pay an amount equal to this balance into the employer's experience account. Senate Bill 641 would amend the act to create a computer project oversight committee, and to require that \$19.45 million be appropriated for the 1989-90 fiscal year for continuing work on the Michigan Employment Security Commission (MESC) computer system improvement and capacity expansion project, and for staff training in use of the new, improved system. Senate Bill 644 would amend the act to require the appropriation of \$2.7 million for fiscal year 1989-90 to fund improvements in MESC headquarters in Detroit. Senate Bill 645 would amend the act to require the appropriation of \$425,000 for fiscal year 1989-90 to secure automated systems for the MESC Fraud Control and Collections Division, and to require the commission to operate an increased fraud control and investigation program, which would be funded in the amount of \$1 million each year from the penalty and interest account in the contingent fund. Senate Bill 646 would require that an appropriation of \$55.575 million be appropriated to MESC from the penalty and interest and the solvency tax accounts in the contingent fund to supplement previous appropriations for fiscal year 1989-90.

### **HOUSE COMMITTEE ACTION:**

The House Labor Committee adopted a substitute to Senate Bill 68 that reduced — from \$28.4 million to \$21 million — the pro rata repayment to employers of excess solvency tax revenues.

### **BACKGROUND INFORMATION:**

Solvency Tax. The Michigan Employment Security Act provides for the imposition of a "solvency tax" on negative balance employers (i.e., employers whose workers receive more in unemployment benefits than the employers paid in unemployment taxes). Revenue from the solvency tax has been deposited in a "contingent fund" and generally used to repay Michigan's federal unemployment insurance interest bearing debt. Approximately \$46.4 million in solvency tax revenue, however, also was used to help fund the automation of Michigan's unemployment insurance system to computerize benefit payments and employer contributions. The tax revenues were tapped when it became evident that federal funds that were originally expected would not be forthcoming. According to a 1985 report by the legislature which investigated complaints of massive cost overruns and poor performance of the computer system, the project had been characterized by mismanagement within the Michigan Employment Security Commission (MESC) and insufficient accountability by MESC staff. Reportedly, certain expenditures allocated to the project were not in fact incurred for that purpose and many now claim that employers should receive a refund.

Fraud. 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.

Adjudication Review. The MESC adjudication process handles disputes about the eligibility of an individual to receive benefits, which are then charged to the employer's account and reflected in that employer's tax rate for the next five years. According to the review conducted by the Departments of Labor and Commerce, this adjudication process is a major source of complaints about the unemployment compensation system: both claimants and employers allege that the other side is favored. Currently, MESC employs the following procedure:

- A worker files a claim for unemployment insurance benefits at a local MESC office. A claims examiner issues a determination stating whether the worker is eligible for benefits. A determination may be a "monetary determination," which establishes benefit levels, or a "non-monetary determination," which establishes eligibility. If both worker and employer are satisfied with the determination, the process ends here.
- If either party disagrees with the determination, a redetermination may be requested. This is the first step appeal, and also occurs at the branch office level, by a claims examiner.
- Should either party disagree with the redetermination, the next step is a referee hearing, followed by appeal to the Board of Review and, ultimately, the courts, beginning at the circuit court level.

One major problem, uncovered by the report, is a widespread lack of knowledge about the process of a referee hearing.

Customer Service. The most consistent finding from the 1988 review conducted by the Departments of Labor and Commerce, and from subsequent meetings with legislators and representatives of the business and labor communities, was frustration at being unable to obtain answers from MESC regarding tax and benefit matters. There were complaints of rudeness, poor response time, inability to discover the appropriate person to begin an inquiry, multiple contacts that were not recorded, and failure by MESC to correct administrative errors. Although the act contains a provision for providing assistance to employers in interpreting the provisions of the act and representing claimants at hearings, the provision expired on April 1, 1986, without ever having been implemented.

### **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)
H.B. 5224	Computerized Data Exchange	None
H.B. 5222	Emergency Plan	\$ 1.500
H.B. 5229	Stabilization Fund	3.500
H.B. 5226	Employee Training Advocacy Assistance (\$0.45 FY '90, \$1.5 FY '91, \$1.5 FY '92, \$1.5 FY '93)	1.000 5.000
H.B. 4815	Employer Fraud	None
H.B. 5227	Successorship Liability	None
S.B. 466	Surety Bonds	None
S.B. 641	Upgrade Computer Staff Computer Training Headquarters Safety Improvements:	18.450 1.000 0.950 1.200 0.550
S.B. 645	Fraud Control: Automated Systems Staff	0.425 1.000
	Total MESC Contingent Funds	\$34.575
S.B. 68	Solvency Tax Distribution	21.000
	Total Appropriation	\$55.575

## ARGUMENTS:

### For:

The bills 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:

By providing for legislative oversight of the Administration Fund, the bills would make MESC more accountable to the public and would help eliminate conditions that contributed to the mismanagement of the unemployment insurance automation project. Requiring legislative approval of expenditures from the Administration Fund also would be consistent with Executive Order 1986-87, which transferred budgeting, accounting, and other MESC management

functions to the Department of Labor, and would be consistent with legislative control over other departmental appropriations. The bills would also bring a measure of equity into the unemployment insurance taxation system by returning to negative balance employers the amount of solvency tax revenue spent on cost overruns for the unemployment insurance automation project. By paying a tax originally designed for a completely different purpose, negative balance employers have been unfairly burdened with financing the lion's share of a project whose costs skyrocketed dramatically over original projections and whose benefits affect all employers.

### For:

The bills would require MESC to operate an employee training program to provide more effective service to claimants and employers. Since, according to the conclusion reached by the Departments of Labor and Commerce in their 1988 study, dissatisfaction with the quality of service received from MESC was the universally most consistent complaint received, and more complaints are lodged against MESC than any other agency or department of government in Michigan, an employee training program would meet a very real need in that system. The above study resulted in videos being made available in public libraries and MESC branch offices to educate both business and labor on the referee hearing process; in combination with the proposed claimant and advocacy program, and the promise that the new computer system will handle four times as many claims as the current system, the bills should pave the way to improve MESC's negative image.

### For:

The bills would help protect the interests of an individual who purchases a business by requiring the employer selling the business to disclose his or her contribution liability. Such information would be most important to a buyer who wished to negotiate a fair purchase price and avoid penalties for failing to pay a contribution liability he or she did not know about.

### Against:

The solvency tax revenues were designed to be used to automate the unemployment insurance system, and to the extent that the project still needs to be finished, the tax revenues should continue to be used for that purpose. The most appropriate way to obtain funds to reimburse negative balance employers who have borne more than their fair share of the costs of this project is to pursue legal remedies against the project's consultants, who pushed the cost of the computer up by collecting \$29.9 million for its services, and the company that installed the faulty system in the first place.

**Response:** Pursuing legal action against the consultants and the company could take years, and conceivably could cost more than the employers would be awarded, or than they would collect in refunds — hardly an equitable or cost-effective solution.

## POSITIONS:

The Michigan State Chamber of Commerce supports the bills. (10-27-89)

General Motors Corporation supports the bills. (10-27-89)

K-Mart Corporation supports the bills. (10-27-89)

The Michigan Retailers Association supports the bills. (10-27-89)

The Michigan Merchants Council supports the bills. (10-27-89)

Representatives of the following agencies and companies testified before the House Labor Committee in support of the bills: (10-25-89)

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

The Department of Commerce.

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.

The Economic Alliance for Michigan as yet has no official position on the bills; however, members of the alliance were the facilitators and conveners of the ad hoc group that developed the package. (10-25-89)

Associated Builders and Contractors has no position on the bills. (10-27-89)