SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

Senate Bill 466 (as enrolled) — PUBLIC ACT 236 of 1989
Senate Bill 640 (as enrolled) — PUBLIC ACT 237 of 1989
Senate Bill 641 (as enrolled) — PUBLIC ACT 238 of 1989
Senate Bill 644 (as enrolled) — PUBLIC ACT 250 of 1989
Senate Bill 645 (as enrolled) — PUBLIC ACT 239 of 1989

Sponsor: Senator John D. Cherry (Senate Bill 466)
Senator Doug Carl (Senate Bill 640)
Senator Doug Cruce (Senate Bill 641)
Senator David Holmes (Senate Bill 644)
Senator Robert Geake (Senate Bill 645)

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

Date Completed: 1-3-90

RATIONALE

In the process of analyzing Michigan's unemployment insurance (UI) system and the administration of the Michigan Employment Security Commission (MESC) and addressing various issues and complaints concerning the system and the MESC, the Ad Hoc Group on Unemployment Insurance Administration and the Directors of the Departments of Labor and Commerce (in a report to the Governor) identified the following problems and made the following recommendations.

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% of the employer's taxable payroll (or total payroll if the employer is a construction employer), the employer is required to pay to the MESC 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 Department of the Attorney General for approval. The Attorney General denied approval, however, 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 because of the Attorney General's objections, 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

According to an audit of the Unemployment Insurance Trust Fund, there is a "continuing problem with reimbursing non-profit employers" who fail to reimburse the fund for benefits paid to their former employees. Reimbursing employers do not pay unemployment insurance taxes but rather are obligated to reimburse the UI Trust Fund for benefits paid by the Fund to their employees who are laid off or terminated. Employers eligible for reimbursing status are state and local governments, school districts, and other nonprofit entities. Currently, there are 25 delinquent reimbursement collection accounts totaling $2,664,489. Most of the money (61% or $1,615,000), however, is owed by only five nonprofit employers, four of whom are considered to be "uncollectible" since they have filed for bankruptcy as "no asset" cases. 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 UI 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, i.e., 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 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 A Report to the Governor on Unemployment Insurance Administration (a report submitted to Governor Blanchard on November 10, 1988, 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 can attempt to defraud the system to avoid paying unemployment taxes, or to reduce the amount they have to pay, by falsifying separation information; failing to report wages paid or reporting less than the amount paid; and colluding with employees (i.e., laying off workers who then collect unemployment insurance benefits while continuing to work without wages for the employer). Claimants may attempt "to establish or continue claims for which they are not eligible or increase the amount of benefits they may receive", by falsely reporting that they are seeking work, failing to report wages earned while receiving benefits (or reporting less than the amount earned), failing to report refusals of work offers, reporting nonexistent dependents, overstating preseparation earnings, and filing claims in other states. 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.

UI 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.

CONTENT

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 the UI computer system improvement and expansion project and staff training, for improvements to the MESC's Detroit offices, and for fraud control systems.

All of the bills are tie-barred to each other and to:

-- Senate Bill 68, which would provide for a pro rata repayment to employers of $21 million from excess solvency tax revenues.
-- Senate Bill 646 (a supplemental appropriations bill for the MESC for fiscal year 1989-90).
-- House Bill 4815, which would make it 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.
-- House Bill 5222, which would require the MESC to finalize an emergency backup plan for the current computer system and would appropriate $1.5 million from the penalty and interest account in the Contingent Fund to fund the plan.
-- House Bill 5223, which would appropriate $5 million to develop and implement a program to provide, upon request, claimant and employer advocacy assistance; to require the MESC to report annually to the Legislature on the program's operation.
-- House Bill 5224, which would provide for notification by computer to the Michigan Employment Security Commission (MESC) of temporary layoffs and allow the waiver of the Act's requirement to report to an employment office to be eligible for unemployment benefits.
-- House Bill 5226, which would require the MESC to operate an employee training program that would be funded in the amount of $1 million annually from the penalty and interest account in the Contingent Fund.
-- House Bill 5227, which would require the transferor of a business to disclose to the transferee certain information pertaining to the transferor's unemployment tax liability and experience. A transferor who failed to provide accurate information would be guilty of a misdemeanor and liable to the transferee for consequential damages.
-- House Bill 5229 which would establish a Stabilization Fund of $3.5 million to offset the effects on State budgeted staffing levels due to unanticipated cuts in Federal administrative funds that could occur in any fiscal year.

Senate Bill 466

The bill specifies that a nonprofit organization subject to the Act that elected to become a reimbursing employer on or after the effective date of the bill would have to secure its obligations by executing and filing a surety bond, irrevocable letter of credit, or other security approved by the MESC. The bill would not apply to any nonprofit reimbursing employer who paid $100,000 or less remuneration per calendar year for employment as determined by the Commission. The bill also would grant the MESC the option of requiring delinquent nonprofit organizations to file and execute an irrevocable letter of credit or other security to secure the payment of their obligations. Currently, the Act specifically states only that the MESC may require a delinquent organization to file and execute a surety bond to secure its obligations or terminate the organization as a reimbursing employer.

Senate Bill 640

The bill would delete requirements that certain employers with large negative balances on June 30 of a given year pay to the MESC an amount equal to the negative balance by the end of that calendar year. Under the Act, if an employer's negative balance equals or exceeds $100,000 and that balance equals or exceeds 300% of the employer's taxable payroll (or total payroll if the employer is a construction employer), the employer is required to pay to the MESC an amount equal to the negative balance by the end of the calendar year. The negative balance due is subject to the interest, penalty, assessment and collection requirements provided in the Act. The MESC is granted the discretion of determining the manner of the payment and 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. The amount of a negative balance that is cancelled is restored to the employer's experience account. (These provisions have never been implemented.)

Senate Bill 641

The bill specifies that the $19,450,000 appropriated from the penalty and interest account in the Contingent Fund for the fiscal year ending September 30, 1990, would have to be spent for continuing work on the unemployment insurance computer system improvement and capacity expansion project. Further, $1 million of this amount would be used for staff training in the use of the improved computer system.

The MESC would be required to appoint a computer project oversight committee of up to 15 members who would be computer system specialists and unemployment insurance specialists from the private sector and MESC employees involved in the project. The committee, on a quarterly basis, would be required to review MESC staff reports on the status of the project and 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 of Representatives Labor Committees and Appropriations subcommittees on Regulatory. The oversight committee upon request would serve in an advisory capacity to the MESC regarding the project.

The appropriation provided for in the bill and made by law 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. Any funds from the appropriation that were not spent within three years of the effective date of the bill would revert to the penalty and interest account.

Senate Bill 644

The bill specifies that the $2.7 million appropriated from the penalty and interest account in the Contingent Fund for the fiscal year ending September 30, 1990, to fund improvements in the Detroit offices of the MESC would have to be spent with the approval of the MESC as follows: $950,000 for elevator modernization, $1.2 million for fire suppression and alarm systems, and $550,000 for exterior and other repairs.

This appropriation made by law 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.

Senate Bill 645

The bill specifies that the $425,000 appropriated from the penalty and interest account in the Contingent Fund for the fiscal year ending September 30, 1990, would have to be used by the MESC to secure automated systems for the fraud control and collections division. The MESC also would be required to 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 made by law 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 421.13a and 421.13d (Senate Bill 466)
421.19 (Senate Bill 640)
Proposed MCL 421.6b (Senate Bill 641)
Proposed MCL 421.6f (Senate Bill 644)
Proposed MCL 421.6g (Senate Bill 645)

FISCAL IMPACT

Senate Bill 466

This bill would give the MESC the authority to require a surety bond for nonprofit organizations that qualify for income tax exemption through Section 501(c)(3) of the Internal Revenue Code. These organizations could include any entity with an annual payroll of $100,000 or more in the following categories:

- Michigan corporations;
- Governmental entities;
- Churches or religious organizations;
- Fraternal organizations;
- Veterans organizations.

These could include hospitals, health or welfare organizations, homes for care of children or the aged, educational institutions and cultural arts organizations.

The fiscal impact on governmental entities is indeterminate since it is not possible to estimate the cost of a surety bond or the consequence of securing current assets to insure future payments.

Senate Bill 640

The bill would have no fiscal impact on State or local government.

Senate Bill 641, 644, and 645

These bills describe how funds appropriated in the supplemental bill (Senate Bill 646) would be spent. Senate Bill 646 appropriates $23,575,000 from the penalty and interest account of the Contingent Fund: $19,450,000 for the Unemployment Insurance computer project, $2,700,000 for the renovation and improvements to the MESC headquarters building in Detroit, and $1,425,000 for the fraud control program.

ARGUMENTS

Supporting Argument
The bills would make a number of changes necessary to eliminate unenforceable unemployment insurance requirements, improve and expand the MESC's computerization and fraud control efforts, ensure proper management and oversight of the MESC's new computer system, protect the UI Trust Fund from further depletion by delinquent reimbursing employers, and finance necessary structural improvements in MESC headquarters in Detroit.

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

Legislative Analyst: L. Burghardt
Fiscal Analyst: K. Lindquist

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.