House
Legislative
Analysis
Section

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UNEMPLOYMENT BENEFIT INCREASE; EXPAND TO INCLUDE INDIAN TRIBES

House Bill 5763 with committee amendments
First Analysis (3-5-02)

Sponsor: Rep. Randy Richardville
Committee: Employment Relations, Training and Safety

THE APPARENT PROBLEM:

In the United States, unemployment insurance is based on a dual program of federal and state statutes. The program was established by the federal Social Security Act in 1935. Much of the federal program is implemented through the Federal Unemployment Tax Act. Each state administers a separate unemployment insurance program, which must be approved by the Secretary of Labor, based on federal standards. When employees are eligible for compensation, the amount they receive, and the period of time benefits are paid, are determined by a mix of federal and state law. To support the unemployment compensation systems, a combination of federal and state taxes are levied upon employers. State employer contributions are normally based on the amount of wages they have paid, the amount they have contributed to the unemployment fund, and the amount that their discharged employees have been compensated with from the fund. Any state tax imposed on employers (and certain credits on that tax) may be credited against the federal tax. The proceeds from the unemployment taxes are deposited in an Unemployment Trust Fund, and each state has a separate account in the fund to which deposits are made. See *BACKGROUND INFORMATION* below.

During 2000, the U.S. Congress passed the "Consolidated Appropriations Act, 2001" (P.L. 106-554), an omnibus bill that incorporated by reference the provisions of H.R. 5662, the Community Renewal Tax Relief Act of 2000. Among those provisions was section 166, which treats Indian tribes and their wholly-owned subsidiaries as governments for Federal Unemployment Tax Act (FUTA) purposes. Briefly, services performed in the employ of tribes generally will no longer be subject to the Federal Unemployment Tax Act, and instead, with some specified exceptions, will be required to be covered under state unemployment insurance laws. Under the federal act, Indian tribes must be offered a reimbursement option, and if a tribe fails to make required payments to the state's unemployment insurance fund, then the tribe becomes liable for the federal unemployment tax, and the state can remove tribal services from state coverage. States with Indian tribes are now required to amend their UI laws to implement the new federal requirements, which went into effect December 21, 2000.

When the legislature enacted Public Act 25 of 1995, lawmakers capped the maximum weekly benefit rate for an individual's unemployment benefit at $300. The rate went into effect on March 28, 1996 and has remained unchanged during the last six years. Before the law changed, the maximum rate had been $293, and the rate was indexed as a percentage of the state average weekly wage, designed to increase gradually. [Under the indexing system that was deleted from the law, the $293 maximum rate would have stayed in effect between January 2, 1994 and January 5, 1997. Then, for benefit years beginning after January 5, 1997, an individual's weekly benefit could not have exceeded 53 percent of the state average weekly wage. For benefit years beginning on or after January 4, 1998 but before January 3, 1999, the rate could not have exceeded 55 percent of the state average weekly wage.] Public Act 25 also reduced the percentage of wages on which the weekly benefit rate was based.

When the maximum benefit rate was capped and the index removed, other changes also were enacted to reduce the amount that employers would have been required to contribute to the Unemployment Trust Fund, and in addition, the new policy changed the conditions of eligibility for some categories of unemployed workers--namely temporary employees, in-home salespeople, full-time employees receiving partial remuneration, and some high-wage earners--

and restricted the payment of benefits for seasonal employees' periods of unemployment.

Those who favored the changes in the unemployment compensation insurance program in 1995 cited unacceptably high business costs in Michigan, including the high cost of the state employers' contributions to the unemployment insurance (UI) system. At the time, Michigan's UI tax rate was among the highest in the country, ranking 3rd in the nation based on total and taxable wages. State revenue from employer taxes ranked 5th highest at $1.3 billion; and Michigan's average UI cost per employee ($446) ranked 6th highest nationally. Since UI is an experience-rated system, the high level of taxes for employers is directly related to Michigan's level of unemployment benefits. In 1994, Michigan's average weekly benefit amount ranked 7th nationally at $212.95, and total benefits paid out ranked 8th highest at $937.5 million. However, opponents of Public Act 25 challenged these rankings, claiming that Michigan's maximum UI benefit level was not in the top 10 among the states, and that it was less than the maximum benefit in five of the other seven Great Lakes states.

When these changes went into effect in 1996, the Michigan Employment Security Commission estimated there would be a net benefit reduction to the unemployed of $354 million, and that Michigan employers could realize a net tax savings of $748 million during the expected five-year economic cycle, 1996-2000. Analysts also estimated that the combined effect of the benefit and tax rate changes on the Federal Unemployment Trust Fund balance could be as much as $394 million during the same six-year period, a fund whose balance at the end of fiscal year 1993-94 was $1,039,011,000.

Six years have passed since the maximum benefit rate was increased, and legislation has been introduced to raise the cap.

THE CONTENT OF THE BILL:

House Bill 5763 would amend the Michigan Employment Security Act to increase an individual's maximum weekly benefit rate to $362, and institute a waiting week. The bill also would extend the program to include Indian tribes.

Benefit rate and waiting week. Currently an individual's maximum weekly benefit rate is $300. Further and under the law, an eligible individual is paid a weekly benefit rate "with respect to the week for which the individual earns or receives no remuneration." House Bill 5763 would increase the maximum weekly benefit rate to $362, but require that a person serve a "waiting week" before receiving benefits. The one-week waiting period could not interrupt the payment of benefits for consecutive weeks of unemployment. The bill further specifies that when a determination, re-determination, or decision was made that benefits were due an unemployed person, the benefits would become payable from the fund in the first eligible week in a benefit year (after the waiting week). However, under the bill the waiting week would apply to an individual only once each calendar year.

Currently under the law, a person is disqualified from benefit eligibility if he or she leaves work voluntarily without good cause attributable to the employer or employing unit. However, if the individual has an established benefit year in effect and during that benefit year leaves unsuitable work within 60 days after the beginning of that work, the leaving does not disqualify the individual. Under House Bill 5763 these provisions would be retained, but the bill also would specify that an individual who left work is presumed to have left work voluntarily without good cause attributable to the employer or employing unit. Further, an individual claiming benefits under the act would have the burden of proof to establish that he or she left work involuntarily or for good cause that was attributable to the employer or employing unit.

In addition, the law currently specifies that all amounts paid to a claimant by an employing unit or former employing unit for a vacation or a holiday, and amounts paid in the form of retroactive pay, or in lieu of notice are considered remuneration in determining whether an individual is employed, and also in determining his or her benefit payments. However, payments for a vacation or holiday, and payments in the form of termination, separation, severance or dismissal allowances, and bonuses are not considered wages or remuneration. Under House Bill 5763, pay in lieu of notice, severance payments, salary continuation, or other remuneration intended by the employing unit as continuing wages, or other monetary consideration, as the result of the separation also would be considered remuneration.

Finally, the bill would delete all references to "commission" in section 32, and insert instead "unemployment agency." This section of the law concerns the manner in which employees' claims and employers' reports are filed with, and settled by, the Employment Security Commission.

Indian tribes or tribal units. House Bill 5763 also specifies that an Indian tribe or tribal unit would be liable as an employer, and would be required to pay reimbursements in lieu of contributions under the same terms and conditions as all other reimbursing employers, unless the Indian tribe or tribal unit elected to pay contributions. Under the bill, an Indian tribe or tribal unit that elected to make contributions would file with the unemployment agency a written request before January 1 of the calendar year, or within 30 days of the effective date of the act. The Indian tribe or tribal unit would be required to determine if the election to pay contributions would apply to the tribe as a whole, only to individual tribal units, or to stated combinations of individual tribal units.

Under the bill, an Indian tribe paying reimbursements in lieu of contributions would be billed for the full amount of benefits attributable to service in the employ of the Indian tribe. It would reimburse the fund annually within 30 calendar days after the mailing of the final billing for the immediately preceding calendar year. If the tribe or tribal unit failed to make payments in lieu of contributions, including assessments of interest and penalties within 90 calendar days after the mailing of the notice of delinquency, the tribe would lose that ability immediately, unless the payment in full or collection on the security was received by the unemployment agency by December 1 of that calendar year. An Indian tribe that lost the ability to make payments in lieu of contributions would be made a contributing employer, and would not have the ability to make payments until all contributions, including payments in lieu of contributions, and interest or penalties had been paid. The ability to make payments in lieu of contributions would be reinstated effective the January 1 immediately following the year in which the tribe had paid in full. If an Indian tribe failed to pay in full within 90 days, the unemployment agency would be required to immediately notify the United States Department of Labor and the Internal Revenue Service (IRS) of the delinquency. If the delinquency were satisfied, the unemployment agency would be required immediately to notify the department and the IRS that what was owed had been paid.

Under House Bill 5763, a notice of delinquency would be required to specify that failure to make full payment within 90 days would result in the Indian tribe losing the ability to make payments in lieu of contributions until all that was owed had been paid in full.

Under the bill, any Indian tribe or tribal unit that made reimbursement payments in lieu of contributions would be required to post a security, subject to all of the following conditions: a) a reimbursing tribe or tribal unit would be required to either post the security within 30 days of the effective date of the bill, or by November 30 of the year before the security was required; b) the security would be required to be in the form of a surety bond, irrevocable letter of credit, or other banking device that was acceptable to the unemployment agency, and that provided for payment, on demand, of an amount equal to the security that was required to be posted (however, the bill specifies that the security could be posted by a third-party guarantor); and, d) the amount of the security required would be 4 percent of the employer's estimated total annual wage payments, as determined by the unemployment agency. Under the bill, Indian tribes or tribal units that had a previous wage payment history would be required to file a security that was equal to 4 percent of the gross wages paid for the 12-month period ending June 30 of the year immediately preceding the year for which the security was required, or 4 percent of the employer's estimated total annual wages, whichever was greater.

The bill specifies that any Indian tribe or tribal unit that was liable for reimbursements in lieu of contributions could form a group account with another tribe or tribal unit.

Definitions. Under the bill, after December 20, 2000, "employer" would include an Indian tribe or tribal unit for which services are performed in employment. Further, after December 20, 2000, "employment" would include service performed in the employ of an Indian tribe or tribal unit, if the service was excluded from employment as that term was defined in the Federal Unemployment Tax Act, chapter 23 of subtitle C of the Internal Revenue Code of 1986, solely by reason of section 3306 (c)(7) of the Federal Unemployment Tax Act, chapter 23 subtitle C of the Internal Revenue Code of 1986, and was not otherwise excluded from the definition of employment under section 43. Under the bill, "Indian tribe" means that term as defined in section 3306(u) of the Federal Unemployment Tax Act, chapter 23 of Subtitle C of the Internal Revenue Code of 1986. "Tribal unit" includes any subdivision, subsidiary, or business enterprise, wholly owned by an Indian tribe. House Bill 5763 also updates references to related federal laws and rules, and also updates the definition of "construction industry."

MCL 421.27 et al

BACKGROUND INFORMATION:

More information about the unemployment compensation insurance system is available from the Employment and Training Administration in the U.S. Department of Labor. The website address is www.doleta.gov/programs/unemcomp.asp.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that the bill would increase state costs related to unemployment benefits paid out of the Michigan Unemployment Insurance Trust Fund. The magnitude of increase would vary over time and be dependent upon prevailing economic conditions. However, as introduced (increasing the maximum weekly benefit to $415), it was estimated that the annual impact of the bill's provisions in terms of increased benefits costs would range from between $116 million and $300 million depending upon prevailing economic conditions. As reported from the committee (increasing the maximum weekly benefit to $362, in line with the cost of living increases since 1996), the net increase would be lower. (3-5-02)

ARGUMENTS:

For:

Michigan's Unemployment Trust Fund has an estimated balance of $2.6 billion. The fund can easily support this increase in the maximum benefit rate--the first in over six years. A maximum weekly benefit rate of $362 provides for an increase that tracks the incremental increase in the Consumer Price Index since 1995, according to a spokesperson for the Detroit Regional Chamber of Commerce.

For:

This legislation is needed in order for Michigan to comply with new requirements under the federal unemployment compensation system. During 2000, the U.S. Congress passed the "Consolidated Appropriations Act, 2001" (P.L. 106-554), an omnibus bill that incorporated by reference the provisions of H.R. 5662, the Community Renewal Tax Relief Act of 2000. Among those provisions was section 166, which treats Indian tribes and their wholly-owned subsidiaries as governments for Federal Unemployment Tax Act (FUTA) purposes. Briefly, services performed in the employ of tribes generally will no longer be subject to the Federal Unemployment Tax Act, and instead, with some specified exceptions, will be required to be covered under state unemployment insurance laws. Under the federal act, Indian tribes must be offered a reimbursement option, and if a tribe fails to make required payments to the state's unemployment insurance fund, then the tribe becomes liable for the federal unemployment tax, and the state can remove tribal services from state coverage. States with Indian tribes are now required to amend their UI laws to implement the new federal requirements, which went into effect December 21, 2000.

For:

The legislation would change the state's unemployment policy to include a "waiting week." It is time that Michigan re-implemented a waiting week for collection of benefits, a provision it once had in its UI system until 1974. The waiting week alleviates some of the liability of employers who pay into the UI system. The unemployment compensation insurance system is, after all, an insurance system. Like other insurance policies, UI should include a check or limitation on benefits. One can think of the waiting week like a deductible, or co-pay in a health insurance policy. This legislation provides for one waiting week during each calendar year.

Against:

The so-called "waiting week" actually would be a "no-benefits week" for most unemployed workers. Although it is true that an unemployed worker who exhausted his or her 26 weeks of benefits would receive the payment for the "lost" or delayed week at the end of that period, the fact is that 77 percent of unemployment compensation benefit recipients do not exhaust their benefits. Since most workers would never reach a 27th week of unemployment, they would not receive the foregone compensation for the first week of unemployment. The "waiting week" is more accurately described as a "penalty week" or an outright benefit cut. Had a waiting week been in effect last year, that week of benefits would have cost workers an average of $260.

Against:

As originally introduced, the bill would have increased the maximum benefit to $415. As reported by the Employment Relations Committee, with an amendment to reduce the rate to $362, the bill is woefully inadequate. According to the Michigan State AFL-CIO, Michigan's maximum benefit is the lowest in the Midwest. (According to the Michigan League for Human Services, the rate in Illinois is $417; Indiana, $312; Minnesota, $427; Ohio, $407; and, Wisconsin, $313.) Further, the state's average benefit represents only 74 percent of the poverty

level for a family of four. Meanwhile, according to AFL-CIO testimony, the Michigan Unemployment Agency gave a tax break to businesses just two months ago, the seventh year in a row that businesses received the tax break, for a total of $1.2 billion. At the time, the agency's press release noted that "our fund has one of the largest cash reserves among all of the state UI trust funds in the nation, and has enough funds to pay well over two years worth of unemployment benefits."

This bill is, then, inadequate on two counts: the maximum weekly benefit rate increase is far too low, and it is not indexed; and, in addition, the bill would cut benefits for fully half of all workers who would fail to collect an unemployment check during the waiting week.

Against:

Michigan has made recent improvements in its business climate with the reduction or phased elimination of property, income, and business taxes, including unemployment taxes. If Michigan reverses its recent policies to improve the business climate and provides generous unemployment compensation benefits through its UI system, the state will be at an economic disadvantage compared with other states, and that will hinder the development of the state's economy, investment in businesses, and job creation. Rather than increase the maximum rate by more than 20 percent, it would make sense to put in place a sliding scale, contingent on how many dependents a laid-off worker has. A sliding scale would minimize the impact that higher unemployment benefits would have on businesses.

POSITIONS:

The Michigan Restaurant Association presented written testimony that the $415 maximum weekly benefit rate was too high. (3-1-02)

The Detroit Regional Chamber of Commerce presented testimony that the $415 maximum weekly benefit rate was too high, and supported a rate of $362, based on the rate of inflation since the $300 cap was set in 1995. (3-4-02)

The Michigan Chamber of Commerce presented written testimony that the $415 maximum weekly benefit rate was too high. (3-5-02)

The Michigan Manufacturers Association presented written testimony that the $415 maximum weekly benefit was too high, and supported a rate of $362. (3-5-02)

The AFL-CIO presented written testimony that three out of four workers would lose a week's benefits, and that the waiting week would cut benefits for half of all workers in higher paying jobs in the skilled trades or who are laid off. (3-5-02)

The Michigan League for Human Services presented written testimony that Michigan's unemployment insurance system as it is currently structured does not meet the needs of low-wage, part-time, and temporary workers and their families. (3-5-02)

Analyst: J. Hunault

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.