House
Legislative
Analysis
Section

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

# UNEMPLOYMENT BENEFIT INCREASE; EXPAND TO INCLUDE INDIAN TRIBES

**House Bill 5763 as passed by the House**
**Second Analysis (3-19-02)**

**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 $375; reduce the nonchargable benefits component (NBC) tax rate for employers who had not laid off any employees in five or more years, set the base period wage threshold at $200; disqualify claimants who were suspended for misconduct from collecting unemployment benefits; modify a claimant's obligation to accept "suitable work" with a previous employer; increase the re-qualification requirement for a claimant who was fired for misconduct; require claimants to accept an offer of suitable work if the pay rate for that work was at least 70 percent of the gross pay rate they received immediately prior to becoming unemployed; require the unemployment agency to notify employers, via postings on a secure web site, that the agency had received correspondence from the employer regarding a particular claim; and clarify that the severance pay exclusion did not apply to "SUB-pay" agreements. The bill also would extend the program to include Indian tribes.

Benefit rate increase; no 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 $375, and retain the provision that provides for a weekly benefit during the first week where the individual earns or receives no remuneration.

Benefit week calculation. Currently, the number of weeks of benefits payable to an individual is calculated by taking 40 percent of the individual's base period wages, and dividing the result by his or her weekly benefit rate. House Bill 5763 would retain this provision but specify that the number of weeks of benefits payable would be calculated by taking 43 percent of the individual's base period wages, and then dividing that by the weekly benefit rate.

Disqualification. 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, House Bill 5763 specifies that an individual would be disqualified from receiving benefits if he or she were suspended or discharged for misconduct connected with the individual's work, or for intoxication while at work. Currently the law specifies disqualification if the employee is discharged (not suspended) for misconduct connected

with the individual's work, or for intoxication while at work, "unless the discharge is subsequently reduced to a disciplinary layoff or suspension."

Further and under the law, an individual is disqualified from receiving benefits if she or he fails to accept suitable work offered, or to return to customary self-employment, if any, when directed by the employment office or the commission. House Bill 5763 would retain this provision, and specify that an employer that received a monetary determination could notify the unemployment agency about the availability of suitable work with the employer on the monetary determination (or other) form provided by the unemployment agency. Upon receipt of the notice, the agency would be required to notify the claimant of the availability of suitable work, and the agency also would be required to consider the availability of work before continuing benefits to the claimant.

Re-qualification. Under the law, after a disqualifying act or discharge, an individual who seeks to re-qualify for benefits must fulfill any in a series of requirements, depending on the reason for his or her disqualification. Among the requirements is one that specifies that if an individual were disqualified for a voluntary quit or a discharge, he or she must earn, in a subsequent job, the lesser of two amounts: either seven times the individual's weekly benefit rate, or 40 times the state minimum hourly wage times seven (which is $1,442, according to committee testimony). House Bill 5763 would specify, instead, that if the individual were disqualified for a voluntary quit, he or she would be required to earn 12 times his or her weekly benefit rate, and it would eliminate the second re-qualification criterion. Further, if an individual were fired and then disqualified, he or she could re-qualify after earning at least 17 times his or her weekly benefit rate.

In addition, if an individual were disqualified for failing to apply for suitable work, failing to return to work after notice of available work, failed to accept suitable work when directed to do so, lost his or her job due to work absence after conviction of a crime and sentence to jail or prison, was discharged for participation in a strike or a wildcat strike, or was employed by a temporary help firm, he would she would be required to complete 13 re-qualifying weeks. Currently the law specifies six re-qualifying weeks.

Finally, if an individual were disqualified because he or she had been discharged for an act of assault and battery connected with work, discharged for theft connected with work, discharged for willful destruction of property, committed a theft after receiving notice of a layoff or discharge, or had been discharged for illegal use of controlled substances, he or she would be required to complete 26 re-qualifying weeks. Currently the law specifies 13 re-qualifying weeks.

Suitable work. Currently under the law, an unemployed individual who refuses an offer of suitable work is denied benefits, under the following circumstances: if he or she has been unemployed for one to 12 weeks, and the pay rate for the offered work is at least 80 percent of his or her gross pay; if he or she has been unemployed for 13 to 20 weeks and the pay rate is at least 75 percent of gross pay; or, if he or she has been unemployed for more than 20 weeks, and the pay rate is at least 70 percent of gross pay. The bill would eliminate this three-tier definition of suitable work, and specify instead that an individual would be disqualified when he or she refused an offer of suitable work, if the pay rate were at least 70 percent of the gross pay rate he or she received immediately before becoming unemployed.

Severance pay. 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, excluding SUB payments, also would be considered remuneration.

Employer contributions. Currently under the law, employers who do *not* lay off people receive a tax rate reduction, if there are no benefits charged against the employer's account for at least 60 months (or five years). The rate reduction is called the Nonchargable Benefits Component, or NBC, and it is but one component in the overall formula that is used to calculate an employer's contribution to the Unemployment Compensation Trust Fund. The rate reduction increases each year people are not laid off, and House Bill 5763 proposes to increase the rate of reduction in the following manner:

| Employer has not laid off employees in… | Current NBC Rate | Proposed NBC Rate in HB 5763 as passed by the House |
|---|---|---|
| 5 years | 0.50 percent | 0.10 percent |
| 6 years | 0.40 percent | 0.09 percent |
| 7 years | 0.30 percent | 0.08 percent |
| 8 years | 0.20 percent | 0.07 percent |
| 9 or more years | 0.10 percent | 0.06 percent |

Base period wage threshold. Under the law, benefits paid are charged against an employer's account in the quarter in which the payments are made. However, benefits paid to an individual are based on the credit weeks earned during his or her base period, and they are charged against the experience accounts of the contributing employers, or charged to the accounts of the reimbursing employers from whom the individual earned credit weeks. If an individual earned credit weeks from more than one employer, a separate determination is made for each. In this way the costs of the insurance benefits are spread throughout the system, as a claimant's previous employers become liable for a portion of the claimant's benefits. Under House Bill 5763, a previous employer who paid a claimant less than $200 in wages would not be liable on a claim. Instead, the most recent employer would carry that liability, and a corresponding charge would be made to the nonchargeable benefits account.

Secure Internet site. Under the bill, the unemployment agency would be required, within six months of the effective date of the act, to provide employers with access to a secure Internet site, so they could determine if correspondence sent to the agency had been received.

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 web site 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 the increase would vary over time and be dependent upon prevailing economic conditions. However, it is estimated that the annual impact of the bill's provisions if the maximum weekly benefit were increased to $375 would range from between $150 million and $350 million during economic downturns. The bill would also increase state revenues contributed by employers not already at their maximum unemployment tax rate, since these rates are based in part on benefit payments.

The reduction in the maximum non-chargeable benefit component of the unemployment tax imposed on employers would be expected to reduce annual employer contributions to the UI Trust Fund by about $6 million annually. Other provisions of the bill could also have an impact benefit payments; however, the amount of that impact is indeterminate.

Further, the bill's requirement that the unemployment agency establish a secure Internet site to provide information to employers would increase agency costs related to increased staffing to maintain the site, as well as for technology costs in establishing the site. The magnitude of the costs is unknown at this time.

Finally, the financial impact of the provision that would calculate the weeks of benefits payable by taking 43 percent of the individual's base period wages, rather than 40 percent, and dividing the result by the individual's weekly benefit rate, is indeterminate at this time. (3-19-02)

## *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 $375 provides for an increase that would exceed the incremental increase in the Consumer Price Index since 1995, and it would be slightly more than the 23 percent increase in the average weekly wage 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:*

This version of the bill is an improvement over the original legislation, since it does not require a waiting week. Any 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:*

The legislation would not 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:*

As originally introduced, the bill would have increased the maximum benefit to $415. As passed by the House with a maximum benefit rate of $375, the bill is woefully inadequate. According to the Michigan State AFL-CIO, Michigan's current $300 maximum benefit is the lowest in the Midwest. (In written testimony submitted to the House committee, the Michigan League for Human Services said 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 that rate is not indexed, to increase as the cost of living increases.

### *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 25 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.

### *Against:*

Section 32b of this bill would require that the employment agency create a secure Internet site within six months, so that employers who had access to it could know whether the correspondence they sent to the agency had been received. According to the Employers' Unemployment Compensation Council, this requirement would be expensive, and compete for the agency's time when other work priorities require its urgent attention. The cost of the secure web site would far outweigh its benefits.

### *POSITIONS:*

The United Food and Commercial Workers-Local 876 supports the bill as it passed the House. (3-18-02)

The Employers' Unemployment Compensation Council would support the bill with a waiting week. (3-18-02)

The Michigan Manufacturers Association would support the bill with a waiting week. (3-18-02)

The Michigan Restaurant Association opposes the bill. (3-18-02)

The National Federation of Independent Business-Michigan opposes the bill as it passed the House. (3-18-02)

The Detroit Regional Chamber of Commerce opposes the bill as it passed the House. (3-18-02)

The Michigan Grocers Association opposes the bill as it passed the House. (3-18-02)

The Michigan Chamber of Commerce opposes the bill as it passed the House. (3-18-02)

International Union, UAW opposes the bill. (3-19-02)

The International Brotherhood of Electrical Workers Local 58 would favor a maximum benefit of $415, oppose a penalty or waiting week, and favor an increase in the multiplier from 4.1 percent to 4.3 percent. (3-19-02)

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.