

Legislative Analysis



SUTA DUMPING PROHIBITION

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4414

Sponsor: Rep. Robert Gosselin

House Bill 4415

Sponsor: Rep. David Robertson

Committee: Employment Relations, Training, and Safety

Complete to 3-7-05

A SUMMARY OF HOUSE BILLS 4414 AND 4415 AS INTRODUCED 2-24-05

Federal law requires that states amend their laws governing unemployment programs to prohibit the practice known as "SUTA dumping," which generally refers to the transfer of employees to a different employing company solely or primarily for the purpose of obtaining a lower experience rating and thus a lower state unemployment tax rate. (The term SUTA refers to "state unemployment tax act.")

House Bills 4414 and 4415 would amend the Michigan Employment Security Act to address this subject. The bills are tie-barred to, and are part of a package with, Senate Bills 171 and 174 and would take effect on July 1, 2005.

The lead bill, Senate Bill 171, contains the statement that "it is intended to be interpreted and applied in a manner so as to meet the minimum requirements of the [federal] SUTA Dumping Prevention Act of 2004 . . . and implementing regulations."

The package of bills, taken together, would amend state law to do the following:

- Prohibit a person from transferring all or part of a trade or business solely or primarily for the purpose of reducing the contribution rate or reimbursement payments in lieu of contributions required under the act (i.e., "SUTA dumping").
- Prohibit a person from acquiring all or part of a trade or business solely or primarily to obtain a lower contribution rate than otherwise would apply under the act.
- Prescribe sanctions against a person who knowingly violated or attempted to violate these provisions.
- Require the unemployment insurance agency to recalculate the contribution rates of both employers if an employer transferred its trade or business to another employer and there were substantially common ownership, management, or control of the two employers.

- Require the agency to assign a new employer contribution rate to a person who was not an employer under the act at the time of a transfer and who acquired a trade or business solely or primarily to obtain a lower contribution rate.
- Require the money recovered under these provisions be credited to the unemployment compensation fund.
- Require the agency to report annually to the both Houses of the Legislature regarding SUTA dumping, beginning January 1, 2006.
- Specify that a transfer of an employer's assets would be a "transfer of business" under criteria described in the act if there were not substantially common ownership, management, or control of the transferor and transferee.

House Bill 4414 would amend the Michigan Employment Security Act to specify that a transfer of an employer's assets would be a "transfer of business" under criteria described in the act only if there were not substantially common ownership, management, or control of the transferor and transferee.

The bill would also delete a provision under which a transfer is a "transfer of business" if an employer transfers any of the assets of the business, by any means other than in the ordinary course of trade, to any transferee substantially owned or controlled by the same interests that owned or controlled the transferor.

Under the Michigan Employment Security Act, the unemployment compensation fund is separate from all public money or state funds, and is administered exclusively for the purposes of the act. House Bill 4415 would amend the act to include in the unemployment compensation fund all money collected under Senate Bill 171, including fines, civil penalties, and interest. (Currently, the fund does not contain interest, penalties, and damages collected under the act and would still not contain interest, penalties, and damages under other provisions of the act.)

FISCAL IMPACT:

The Department of Labor and Economic Growth (DLEG) estimates that the federally-mandated prohibition of SUTA dumping will increase revenue for the Unemployment Compensation Fund by a range of \$62 million to \$95 million, plus an additional but indeterminate amount for new penalty and interest provisions. In addition, the state will avoid the loss of federal administrative funds totaling approximately \$80 million for the unemployment compensation program. The bills impose additional investigative and reporting requirements on DLEG, which will add an indeterminate administrative cost.

Legislative Analyst: E. Best
Fiscal Analyst: Richard Child

■ 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.