Legislative Analysis

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UIA SPECIAL FRAUD CONTROL FUND

House Bill 4408
Sponsor: Rep. Jim Stamas
Committee: Commerce

Complete to 3-14-11

A SUMMARY OF HOUSE BILL 4408 AS INTRODUCED 3-9-11

The bill would amend the Michigan Employment Security Act to do the following:

- Create the "Special Fraud Control Fund" and require amounts recovered for unemployment insurance fraud violations to be deposited into the Fund.

- Require money in the Fund to be spent first on packaged software that had a proven record of success with the detection and collection of unemployment benefit overpayments and then for administrative costs associated with the prevention, discovery, and collection of unemployment benefit overpayments.

- Allow the recovery of interest on the amount of improperly paid unemployment benefits.

- Double the amount of damages that may be recovered for a second or subsequent fraud violation involving less than $500.

- Require interest and penalties collected for improperly paid benefits to be paid into the proposed new fund.

Special Fraud Control Fund (Section 10)
This fund would be created in the Department of Treasury Contingent Fund as a separate fund to be known as the "Special Fraud Control Fund." The Fund would consist of money collected or received by the Unemployment Agency from all interest and penalties collected under Section 62; all gifts to, interest on, or profits earned by the Fund; and amounts credited under Section 54(k)(ii). Money in the Fund would be continuously appropriated only to the UIA and could not be transferred or otherwise made available to any other state agency.

All amounts in the Fund would have to be used first for the acquisition of packaged software that had a proven record of success with the detection and collection of unemployment benefit overpayments, and then for administrative costs associated with the prevention, discovery, and collection of unemployment benefit overpayments, "as included in the biennial budget of the Unemployment Agency and approved by the Legislature." The UIA would have to submit a report to the Secretary of the Senate and the Clerk of the House of Representatives at the close of the two-year period following the bill's effective date, to show how the money from the Fund was used and the results obtained from it.

Interest on Overpayment of Benefits (Section 62)
The bill specifies that, if the Unemployment Insurance Agency (UIA) determined that a person had obtained benefits to which he or she was not entitled, the UIA could recover the amount received plus interest. Currently, the UIA may recover only the amount received.

Fraud: Second and Subsequent Violations (Section 54)
Under the act, various sanctions apply to an employing unit, claimant, UIA employee, or other person who knowingly makes a false statement or representation to obtain or increase an unemployment benefit, to prevent or reduce the payment of benefits to an individual entitled to benefits, or to avoid or reduce a contribution or other payment required under the act or the unemployment compensation law of any state or of the federal government.

The bill would allow the UIA to recover damages equal to four times the amount obtained fraudulently for a second or subsequent violation involving less than $500. Currently under the act, if the amount obtained as a result of a violation is less than $500, the UIA may recover the applicable amount plus damages of two times that amount. This is the case no matter how many violations. (Other amounts can be recovered for violations involving larger amounts.)

Amounts recovered by the UIA for violations described above would have to be credited as follows: (1) deductions from unemployment insurance benefits would have to be applied solely to the amount of the benefits liable to be repaid; (2) all other recoveries would have to be applied first to administrative sanctions and damages, then to interest, and then to the amount liable to be repaid. The amounts applied to administrative sanctions, damages, and interest would be credited to the Special Fraud Control Fund.

Interest and Penalties to Special Fund
The bill would require interest and penalties collected under Section 62 to be paid into the Special Fraud Control Fund. Under the act, past-due contributions and amounts illegally obtained must bear interest at the rate of 1% per month, computed on a day-to-day basis for each day the amounts remain unpaid, until the UIA receives payment plus accrued interest. Interest and penalties collected under this provision must be paid into the Contingent Fund. The bill would make an exception for the interest and penalties collected under Section 62 (for benefits paid to a person who was not entitled to them), which would have to be paid into the Special Fraud Control Fund.

FISCAL IMPACT:

State Fiscal Impact: The bill would have an indeterminate fiscal impact on the state.

The bill increases the penalties for a second or subsequent violation resulting in less than $500 in benefits being fraudulently overpaid or $500 in taxes being fraudulently underpaid. While the enhanced penalty would tend to increase penalty revenue to the agency, it could deter fraudulent behavior as well, resulting in less penalty revenue. To the extent the enhanced penalties deters fraudulent behavior, the UIA would generally pay less in benefits and receive more unemployment tax revenue. The bill re-directs revenue from this violation from the Contingent Fund to the new Special Fraud Control Fund. This would tend to decrease revenue in the Contingent Fund, which is used to support agency operations and certain employment service programs of the Bureau of Workforce Transformation, and to make interest payments on the state's outstanding Title 12 advances.[1] On the other hand the Special Fraud Control Fund would be expended to improve the UIA's efforts at detecting and collecting benefit overpayments, likely resulting in additional penalty revenue credited to the Contingent Fund and additional restitution payments credited to the Unemployment Trust Fund.[2]

The bill would also credit to the Special Fraud Control Fund interest charged on recoverable non-fraud overpayments (Sec. 62). Data on the amount of overpayments recovered by the UIA is not yet available, but this provision would tend to increase state revenue.[3]

According to the U.S. Department of Labor, Benefit Accuracy Measurement (BAM) program, the UIA's CY 2009 annual benefit overpayment rate was estimated to be 7.21%, while the fraud overpayment rate was estimated to be 0.74%. With the UIA paying out more than $3.7 billion in unemployment benefits, the annual overpayment amount equates to $267.9 million, while the fraud overpayment amount equates to $27.6 million.[4]

The budget for the UIA includes two distinct line items, totaling 67.2 FTE positions and $6.4 million (Federal) for the special audit and collections program and the expanded

[1] According to the U.S. Department of Treasury, Bureau of the Public Debt, the outstanding balance as of March 10, 2011 is $3,881,485,784.62.

[2] Both the Bush Administration (in 2006) and the Obama Administration (in 2010) have proposed legislation, known as the Unemployment Compensation Program Integrity Act, that would permit states to re-direct up to 5% of recovered overpayments from the state unemployment trust fund to a special fund to be used solely for "the payment of costs of deterring, detecting, and collecting erroneous payments to individuals." The Obama Administration proposal would also permit states to use these funds to combat employee misclassification and SUTA dumping. Under current federal law, all recovered overpayments are to be credited to the unemployment trust fund. Both administrations also proposed requiring states to assess a penalty of at least 15% on overpayments received due to fraud, with the penalty revenue to be used for overpayment detection and collection.

[3] For a comparison of state UI law provisions concerning overpayments, see the 2010 edition of *Comparison of State Unemployment Laws*, U.S. Department of Labor, http://www.ows.doleta.gov/unemploy/comparison2010.asp. According to the DOL, about 15 states assess interest on non-fraud overpayments. Section 62 provides for a statute of limitations of 3 years (non-fraud) to 6 years (fraud) by which the UIA may recover overpayments. Several states have a statute of limitations of 5 years (non-fraud) to 10 years (fraud), with many states having no limitation at all. Section 62 also permits the UIA to withhold up to 20% of a claimants weekly benefit amount to repay the non-fraud overpayment. The report notes that many states allow the unemployment agency to withhold a higher percentage – often 100% – of the weekly benefit amount in order to compel repayment of the non-fraud overpayment.

[4] See, http://www.ows.doleta.gov/unemploy/bqc.asp. The fraud rate is a part of the annual rate. For the United States as a whole, the CY 2009 annual overpayment rate was estimated to be 9.28%, while the fraud rate was estimated to be 2.05%.

fraud control program. The UIA includes several divisions within the agency focused on payment accuracy, the collection of overpayments, and investigating suspected cases of fraud (benefit fraud, employer fraud, and internal staff fraud). Agency staff also reviews agency policy, procedures, and process to ensure (and improve) program integrity.

Local Fiscal Impact: The bill could result in some cost savings to local units of government. The impact, if any, on local units of government would primarily result from any resulting decrease in the benefit overpayment rates for former local unit employees. Local units of government do not pay unemployment insurance taxes but, instead, reimburse the state Unemployment Trust Fund, on a dollar-for-dollar basis, the amount of benefits their former employees receive in benefits. To the extent that the legislation result in reduced benefit overpayments and increased overpayment collection rates, local units could realize some cost savings for its reimbursement payments to the state.

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