

Legislative Analysis



UNEMPLOYMENT INSURANCE: EXCLUDE THOSE UNDER H-2B & J-1 VISAS

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House Bill 4958 (Substitute H-1)
Sponsor: Rep. Frank Foster
Committee: Commerce

Complete to 10-21-13

A SUMMARY OF HOUSE BILL 4958 AS REPORTED FROM HOUSE COMMITTEE

The bill would amend the Michigan Employment Security Act to specify that, beginning April 1, 2014, the term "employment" would not apply to nonagricultural service performed by an individual who is an alien admitted to the United States to perform that service under an H-2B visa or under a J-1 exchange visitor program visa, if all of the following conditions are satisfied:

- That service is excluded from employment under the federal Internal Revenue Code (Section 3306 (c) (19).
- The employer claiming the exclusion is the petitioner of the H-2B visa holder, as documented on an approved I-129 petition for a nonimmigrant worker; or the employee is the sponsor of the J-1 exchange visitor program visa holder, and the exchange visitor program is limited to those described in federal law (at 22 CFR 62.32).
- The employer certifies to the unemployment agency as to each individual engaged in that service for each quarterly report that the federal tax (described in Section 42 (6)) does not apply to that service.
- The employer claiming the exclusion maintains supporting documentation for the claim for six years and, upon request, provides the unemployment agency with documentation for compliance and verification purposes.

The bill amends a section that currently specifies that the term "employment" does not include agricultural service performed by an individual who is an alien admitted to the United States to perform that service under the federal Immigration and Nationality Act.

Generally speaking, if a service is not included in the term "employment," the individuals performing that service are not part of the unemployment compensation system and employers do not have to pay unemployment taxes on them.

MCL 421.43

BACKGROUND INFORMATION:

According to U.S. Citizenship and Immigration Services, within the Department of Homeland Security:

- The H-2B program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary nonagricultural jobs.
- The J-1 classification (exchange visitors) is authorized for those who intend to participate in an approved program for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, receiving training, or to receive graduate medical education or training.

FISCAL IMPACT:

House Bill 4958 would have a nominal negative fiscal impact on the balance in the state's account in the Unemployment Trust Fund (UTF) to the extent that contributing employers would no longer remit unemployment insurance taxes on the wages of exchange visitors employed under J-1 visas and temporary workers employed under H-2B visas.

Based on estimates provided by the Unemployment Insurance Agency (UIA), there is a maximum of approximately 7,683 workers (employed both full- and part-time) that would fall under the exclusion provided by HB 4958. According to the UIA, the average state unemployment insurance tax rate during 2012 was 5.56%. Given that state unemployment insurance taxes are paid only on the first \$7,000 of wages and assuming that each of the 7,638 is working and earning at least that amount in wages, HB 4958 could result in a maximum annual reduction of approximately \$2.97 million to the state's account in the UTF. As a point of reference, total state unemployment insurance taxes collected in 2012 was \$1.78 billion, thus HB 4958 could result in a maximum reduction of 0.17% of annual state unemployment tax collections.

POSITIONS:

The following organizations indicated support on 10-16-23: The Michigan Restaurant Association, the Michigan Chamber of Commerce, and the Michigan Manufacturers Association.

The Department Licensing and Regulatory Affairs indicated neutrality. (10-16-23)

At the Commerce Committee meeting of 9-25-13, a large number of businesses and business organizations indicated support for the bill, notably tourism-related businesses, such as resorts, hotels, and restaurants. Also included were representatives from

convention and visitors bureaus, such as Greater Lansing, Sault Area, Mackinac Island, Manistee, St. Ignace, Flint and Genesee, and Traverse City.

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■ 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.