

HOUSE BILL No. 5221

October 24, 1989, Introduced by Reps. London, Perry Bullard, Varga, Ciaramitaro, Emerson, Sikkema, Ouwinga, Muxlow, Walberg, Martin, Jaye, DeLange, O'Connor, Giese, Hoekman, Miller, DeBeaussaert, DeMars, Jonker, Berman, Hertel and Bankes and referred to the Committee on Labor.

A bill to amend section 19 of Act No. 1 of the Public Acts of the Extra Session of 1936, entitled as amended "Michigan employment security act," as amended by Act No. 164 of the Public Acts of 1983, being section 421.19 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 19 of Act No. 1 of the Public Acts of
2 the Extra Session of 1936, as amended by Act No. 164 of the
3 Public Acts of 1983, being section 421.19 of the Michigan
4 Compiled Laws, is amended to read as follows:

5 Sec. 19. (a) The commission shall determine the contribution
6 rate of each contributing employer for each calendar year after
7 1977 as follows:

8 (1) (i) Except as provided in paragraph (ii), AN employer's
9 rate shall be calculated as described in table A with respect to

1 wages paid by the employer in each calendar year for employment.
2 If an employer's coverage is terminated under section 24, or at
3 the conclusion of 8 or more consecutive calendar quarters during
4 which the employer has not had workers in covered employment, and
5 if the employer becomes liable for contributions, the employer
6 shall be considered as newly liable for contributions for the
7 purposes of table A or table B of this subsection.

8 (ii) To provide against the high risk of net loss to the
9 fund in such cases, an employing unit which becomes newly liable
10 for contributions under this act in a calendar year beginning on
11 or after January 1, 1983 in which it employs in "employment", not
12 necessarily simultaneously but in any 1 week 2 or more individu-
13 als in the performance of 1 or more contracts or subcontracts for
14 construction in the state of roads, bridges, highways, sewers,
15 water mains, utilities, public buildings, factories, housing
16 developments, or similar construction projects, shall be liable
17 for contributions to that employer's account under this act for
18 the first 4 years of operations in this state at a rate equal to
19 the average rate paid by employers engaged in the construction
20 business as determined by contractor type in the annual report
21 published by the commission in the manner provided in table B.

22 (iii) For the calendar years 1983 and 1984, the contribution
23 rate of a construction employer shall not exceed its 1982 contri-
24 bution rate with respect to wages, paid by that employer, related
25 to the execution of a fixed price construction contract which was
26 entered into prior to January 1, 1983. Furthermore, such
27 contribution rate shall be reduced, by the solvency tax rate

1 assessed against the employer under section 19a, for the year in
 2 which such solvency tax rate is applicable. Furthermore, not-
 3 withstanding section 44, the taxable wage limit, for calendar
 4 years 1983 and 1984, with respect to wages paid under such fixed
 5 price contract, shall be the maximum amount of remuneration paid
 6 within a calendar year by an employer subject to the federal
 7 unemployment tax act, 26 U.S.C. 3301 to 3311, to an individual
 8 with respect to employment as defined in that act which is
 9 subject to tax under that act during that year.

Table A

Year of Contribution
Liability

Contribution Rate

1

2.7%

2

2.7%

3

1/3 (chargeable benefits component)
+ 1.8%

4

2/3 (chargeable benefits component)
+ 1.0%

5 and over

(chargeable benefits component) +
(account building component) +
(nonchargeable benefits component)

Table B

Year of Contribution
Liability

Contribution Rate

1

average construction contractor rate
as determined by the commission

2

average construction contractor rate
as determined by the commission

3

1/3 (chargeable benefits component)
+ 2/3 average construction contrac-
tor rate as determined by the com-
mission

4

2/3 (chargeable benefits component)
+ 1/3 average construction contrac-
tor rate as determined by the com-
mission

5 and over

(chargeable benefits component) +
(account building component) +
(nonchargeable benefits component)

(2) With the exception of employers who are in the first 4
consecutive years of liability, each employer's contribution rate
for each calendar year after 1977 shall be ~~any amount required~~
~~to be paid pursuant to subsection (c) and~~ the sum of the follow-
ing components, all of which are determined as of the computation
date: a chargeable benefits component determined under
subdivision (3), an account building component determined under

1 subdivision (4), and a nonchargeable benefits component.
2 determined under subdivision (5). Each employer's contribution
3 rate for calendar years before 1978 shall be determined by the
4 provisions of this act in effect during the years in question.

5 (3) (i) The chargeable benefits component of an employer's
6 contribution rate is the percentage determined by dividing: the
7 total amount of benefits charged to the employer's experience
8 account within the lesser of 60 consecutive months ending on the
9 computation date or the number of consecutive months ending on
10 the computation date with respect to which the employer has been
11 continuously liable for contributions; by the amount of wages,
12 subject to contributions, paid by the employer within the same
13 period. If the resulting quotient is not an exact multiple of
14 $1/10$ of 1%, it shall be increased to the next higher multiple of
15 $1/10$ of 1%.

16 (ii) The chargeable benefits component shall not exceed
17 6.0%, unless there is a statutory change in the maximum duration
18 of regular benefit payments or the statutory ratio of regular
19 benefit payments to credit weeks. In the event of a change in
20 the maximum duration of regular benefit payments, the maximum
21 chargeable benefits component shall increase by the same per-
22 centage as the statutory percentage change in the duration of regu-
23 lar benefit payments between computation dates. In the event of
24 an increase in the statutory ratio of regular benefit payments to
25 credit weeks, as described in section 27(d), the maximum charge-
26 able benefits component determined as of the computation dates
27 occurring after the effective date of the increased ratio shall

1 increase by $1/2$ the same percentage as the increase in the ratio
2 of regular benefit payments to credit weeks. If the resulting
3 increase is not already an exact multiple of $1/10$ of 1%, it shall
4 be adjusted to the next higher multiple of $1/10$ of 1%.

5 (4) The account building component of an employer's contri-
6 bution rate is the percentage arrived at by the following
7 calculations: (i) Multiply the amount of the employer's total
8 payroll, as defined in section 18(f), for the 12 months ending on
9 the computation date, by the cost criterion selected for the com-
10 putation date under section 18(e); (ii) Subtract the amount of
11 the balance in the employer's experience account as of the compu-
12 tation date from the product determined under (i); and (iii) if
13 the remainder is zero or a negative quantity, the account build-
14 ing component of the employer's contribution rate shall be zero;
15 but (iv) if the remainder is a positive quantity, the account
16 building component of the employer's contribution rate shall be
17 determined by dividing that remainder by the employer's total
18 payroll, as defined in section 18(f), paid within the 12 months
19 ending on the computation date. The account building component
20 shall not exceed the lesser of $1/4$ of the percentage thus calcu-
21 lated or 2%. However, for calendar years after 1982, the account
22 building component shall not exceed the lesser of $1/2$ of the per-
23 centage thus calculated or 3%, if on the June 30 of the preceding
24 calendar year the balance in the unemployment compensation fund
25 was less than 50% of an amount equal to the aggregate of all con-
26 tributing employers' annual payrolls, for the 12 months ending
27 March 31, as defined in section 18(f), times the cost criterion

1 selected for the computation date under section 18(e). The
2 account building component thus determined, if not an exact
3 multiple of $1/10$ of 1%, shall be adjusted to the next higher
4 multiple of $1/10$ of 1%.

5 (5) The nonchargeable benefits component of employers' con-
6 tribution rates is the percentage arrived at by the following
7 calculations: (i) multiply the aggregate amount of all contrib-
8 uting employers' annual payrolls, for the 12 months ending March
9 31, as defined in section 18(f), by the cost criterion selected
10 for the computation date under section 18(e); (ii) subtract the
11 balance of the unemployment fund on the computation date, net of
12 federal advances, from the product determined under (i); and
13 (iii) if the remainder is zero or a negative quantity, the non-
14 chargeable benefits component of employers' contribution rates
15 shall be zero; but (iv) if the remainder is a positive quantity,
16 the nonchargeable benefits component of employers' contribution
17 rates shall be determined by dividing that remainder by the total
18 of wages subject to contributions under this act paid by all con-
19 tributing employers within the 12 months ending on March 31 and
20 adjusting the quotient, if not an exact multiple of $1/10$ of 1%,
21 to the next higher multiple of $1/10$ of 1%. The maximum non-
22 chargeable benefits component shall be 1%. An employer with a
23 positive balance in its experience account on the June 30 compu-
24 tation date preceding the calendar year shall receive for that
25 calendar year a credit in an amount equal to $1/2$ of the extra
26 federal unemployment tax paid in the preceding calendar year
27 under section 3302(c)(2) of the federal unemployment tax act,

1 26 U.S.C. 3302(c)(2), because of an outstanding balance of
2 unrepaid advances from the federal government to the unemployment
3 compensation fund under section 1201 of the social security act,
4 42 U.S.C. 1321. However, the credit for any calendar year shall
5 not exceed an amount determined by multiplying the employer's
6 nonchargeable benefit component for that calendar year times the
7 employer's taxable payroll for that year. Contributions paid by
8 an employer shall be credited to the employer's experience
9 account, in accordance with the provisions of section 17(d),
10 without regard to any credit given under this subsection. The
11 amount credited to an employer's experience account shall be the
12 amount of the employer's tax before deduction of the credit pro-
13 vided in this subsection.

14 (6) Notwithstanding other provisions of this section, for
15 calendar years 1979 through 1982, the total of the chargeable
16 benefits and account building components of an employer's contri-
17 bution rate for a calendar year shall not exceed by more than 1/2
18 of 1% the higher of 4% or the total of the chargeable benefits
19 component and the account building component which applied to the
20 employer during the preceding calendar year. For purposes of
21 1978 contribution rates, the sum of the chargeable benefits and
22 account building tax may not increase more than 1/2 of 1% above
23 the higher of 4% or the employer's 1977 contribution rate, exclu-
24 sive of the then applicable emergency contribution rate. The
25 total of the chargeable benefits and account building components
26 of an employer's contribution rate shall not exceed by more than
27 1% in the 1983 calendar year, 1.5% in the calendar year 1984, or

1 2% in the 1985 calendar year the higher of 4% or the total of the
2 chargeable benefits and the account building components which
3 applied to the employer during the preceding calendar year. For
4 calendar years after 1985, the total of the chargeable benefits
5 and account building components of the employer's contribution
6 rate shall be computed without regard to the foregoing limitation
7 provided in this subdivision. During a year in which the subdi-
8 vision limits an employer's contribution rate, the resulting
9 reduction shall be considered to be entirely in the experience
10 component of the employer's contribution rate, as defined in sec-
11 tion 18(d).

12 (b) An employer previously liable for contributions under
13 this act which on or after January 1, 1978 filed a petition for
14 arrangement under the bankruptcy act of 1898, chapter 541,
15 30 Stat. 544, or on or after October 1, 1979 filed a petition for
16 reorganization under title 11 of the United States code, entitled
17 bankruptcy, 11 U.S.C. 101 to ~~+5326~~ 1330 pursuant to which a
18 plan of arrangement or reorganization for rehabilitation purposes
19 has been confirmed by order of the United States bankruptcy
20 court, shall be considered as a reorganized employer and shall
21 have a reserve fund balance of zero as of the first calendar year
22 immediately following court confirmation of the plan of arrange-
23 ment or reorganization, but not earlier than the calendar year
24 beginning January 1, 1983, if the employer meets each of the fol-
25 lowing requirements:

26 (1) An employer whose plan of arrangement or reorganization
27 has been confirmed as of ~~the effective date of this~~

1 ~~subparagraph~~ JANUARY 1, 1983 shall, within 60 days after ~~the~~
2 ~~effective date of this subparagraph~~ JANUARY 1, 1983, notify the
3 commission of its intention to elect the status of a reorganized
4 employer. An employer which has not had a plan of arrangement or
5 reorganization confirmed as of ~~the effective date of this~~
6 ~~subparagraph~~ JANUARY 1, 1983 shall, within 60 days after the
7 entry by the bankruptcy court of the order of confirmation of the
8 plan of arrangement or reorganization, notify the commission of
9 its intention to elect the status of a reorganized employer. An
10 employer shall not make an election under this subdivision after
11 December 31, 1985.

12 (2) The employer has paid to the commission all contribu-
13 tions previously owed by the employer pursuant to this act for
14 all calendar years prior to the calendar year as to which the
15 employer elects to begin its status as a reorganized employer.

16 (3) More than 50% of the employer's total payroll is paid
17 for services rendered in this state during the employer's fiscal
18 year immediately preceding the date the employer notifies the
19 fund administrator of its intention to elect the status of a
20 reorganized employer.

21 (4) The employer, within 180 days after notifying the com-
22 mission of its intention to elect the status of a reorganized
23 employer, makes a cash payment to the commission, for the unem-
24 ployment compensation fund, equal to: .20 times the first
25 \$2,000,000.00 of the employer's negative balance, .35 times the
26 amount of the employer's negative balance above \$2,000,000.00 and
27 up to \$5,000,000.00, and .50 times the amount of the negative

1 balance above \$5,000,000.00. The total amount so determined by
2 the commission shall be based on the employer's negative balance
3 existing as of the end of the calendar month immediately preced-
4 ing the calendar year in which the employer will begin its status
5 as a reorganized employer. If the employer fails to pay the
6 amount determined, within 180 days of electing status as a reor-
7 ganized employer, the commission shall reinstate the employer's
8 negative balance previously reduced and redetermine the
9 employer's rate on the basis of such reinstated negative
10 balance. Such redetermined rate shall then be used to redeter-
11 mine the employer's quarterly contributions for that calendar
12 year. Such redetermined contributions shall be subject to the
13 interest provisions of section 15 as of the date the redetermined
14 quarterly contributions were originally due.

15 (5) Except as provided in subdivision (6), the employer con-
16 tribution rates for a reorganized employer beginning with the
17 first calendar year of the employer's status as a reorganized
18 employer shall be as follows:

1		
2	Year of Contribution	Contribution Rate
3	Liability	
4		
5	1	2.7% of total taxable wages paid
6	2	2.7%
7	3	2.7%
8	4 and over	(chargeable benefits component based
9		upon 3-year experience) plus
10		(account building component based
11		upon 3-year experience) plus
12		(nonchargeable benefits component)
13	(6) To provide against the high risk of net loss to the fund	
14	in such cases, any reorganized employer which employs in	
15	"employment", not necessarily simultaneously but in any 1 week 25	
16	or more individuals in the performance of 1 or more contracts or	
17	subcontracts for construction in the state of roads, bridges,	
18	highways, sewers, water mains, utilities, public buildings, fac-	
19	tories, housing developments, or similar major construction	
20	projects, shall be liable beginning the first calendar year of	
21	the employer's status as a reorganized employer for contribution	
22	rates as follows:	

1		
2	Year of Contribution	Contribution Rate
3	Liability	
4		
5	1	average construction contractor rate
6		as determined by the commission
7	2	average construction contractor rate
8		as determined by the commission
9	3	1/3 (chargeable benefits component)
10		+ 2/3 average construction contrac-
11		tor rate as determined by the com-
12		mission
13	4	2/3 (chargeable benefits component)
14		+ 1/3 average construction contrac-
15		tor rate as determined by the com-
16		mission
17	5 and over	(chargeable benefits component) +
18		(account building component) +
19		(nonchargeable benefits component)
20	(c) If, on a June 30 computation date, an employer's nega-	
21		
22		
23		
24		
25		
26		
27		
28		
	tive balance equals or exceeds \$100,000.00, and if such negative	
	balance equals or exceeds 300% of the employer's taxable payroll	
	or in the case of a construction employer the negative balance	
	equals or exceeds 300% of the employer's total payroll, an amount	
	equal to such negative balance shall become due and payable to	
	the commission by the end of the calendar year containing such	
	June 30 computation date. The negative balance so due and	
	payable shall be subject to the interest, penalty, assessment,	

~~1 and collection provisions of section 15. The commission may
2 determine the manner of payment and may, in its discretion,
3 cancel any part of the negative balance due and payable. Amounts
4 paid to the commission under this subsection shall be paid into
5 the unemployment compensation fund and shall be credited to the
6 employer's experience account. The amount of the negative bal-
7 ance canceled by the commission shall be restored to the
8 employer's experience account.~~

9 (C) ~~(d)~~ Upon application by an employer to the commission
10 for designation as a distressed employer, the commission, within
11 60 days after receipt of the application, shall make a determina-
12 tion whether the employer meets the conditions set forth in this
13 subsection. Upon finding that the conditions are met, the com-
14 mission shall notify the legislature of the determination and
15 request legislative acquiescence in the determination. If the
16 legislature approves the determination by concurrent resolution,
17 the employer shall be considered to be a "distressed employer" as
18 of January 1 of the year in which the determination is made. The
19 commission shall notify the employer of such determination and
20 notify the employer of its contribution rate as a distressed
21 employer and the contribution rate that would apply if the
22 employer was not a distressed employer. The distressed employer
23 shall determine its tax contribution using the 2 rates furnished
24 by the commission and shall pay its tax contribution based on the
25 lower of the 2 rates. If the determination of distressed
26 employer status is made during the calendar year, the employer
27 shall be entitled to a credit on future quarterly installments

1 for any excess contributions paid during that initial calendar
2 year. The employer shall notify the commission of the difference
3 between the amount paid and the amount which would have been paid
4 if the employer were not determined to be a distressed employer
5 and the difference will be owed to the unemployment compensation
6 fund, payable in accordance with this subsection. Cumulative
7 totals of the difference must be reported to the commission with
8 each return required to be filed. The commission may periodi-
9 cally determine continued eligibility of an employer under this
10 subsection. When the commission makes a determination that an
11 employer no longer qualifies as a distressed employer, the com-
12 mission shall notify the employer of that determination. After
13 notice by the commission that the employer no longer qualifies as
14 a distressed employer, the employer will be liable for contribu-
15 tions, beginning with the first quarter occurring after receipt
16 of notification of disqualification, on the basis of the rate
17 that would apply if the employer was not a distressed employer.
18 The contribution rate for a distressed employer shall be calcu-
19 lated under the law in effect for the 1982 calendar year except
20 that the rate thus determined shall be reduced by the applicable
21 solvency tax rate assessed against the employer under section
22 19a. The taxable wage limit of such distressed employer for the
23 1983, 1984, and 1985 calendar years shall be the maximum amount
24 of remuneration paid within a calendar year by such an employer
25 subject to the federal unemployment tax act, 26 U.S.C. 3301 to
26 3311, to an individual with respect to employment as defined in
27 that act which is subject to tax under that act during that

1 year. Commencing with the fourth quarter of 1986, the distressed
2 employer will pay in 10 equal annual installments the amount of
3 the unpaid contributions owed to the unemployment compensation
4 fund due to the application of this subsection, without
5 interest. Each installment shall be made with the fourth quar-
6 terly return for the respective year. As used in this subsec-
7 tion, "distressed employer" means an employer whose continued
8 presence in this state is considered essential to the state's
9 economic well-being and who meets the following criteria:

10 (1) The employer's average annual Michigan payroll in the 5
11 previous years exceeded \$500,000,000.00.

12 (2) The employer's average quarterly number of employees in
13 Michigan in the 5 previous years exceeded 25,000.

14 (3) The employer's business income as defined in section 3
15 of Act No. 228 of the Public Acts of 1975, being section 208.3 of
16 the Michigan Compiled Laws, has resulted in an aggregate loss of
17 \$1,000,000,000.00 or more during the 5-year period ending in the
18 second year prior to the year for which the application is being
19 made.

20 (4) The employer has received from the state of Michigan
21 loans totaling \$50,000,000.00 or more or loan guarantees from the
22 federal government in excess of \$500,000,000.00, either of which
23 are still outstanding.

24 (5) Failure to give an employer designation as a distressed
25 employer would adversely impair the employer's ability to repay
26 the outstanding loans owed to the state of Michigan or which are
27 guaranteed by the federal government.

1 (D) ~~(e)~~ An employer may at any time make payments to that
 2 employer's experience account in the fund in excess of the
 3 requirements of this section, but these payments, when accepted
 4 by the commission, shall be irrevocable. A payment made by an
 5 employer within 30 days after mailing to the employer by the com-
 6 mission of a notice of the adjusted contribution rate of the
 7 employer shall be credited to the employer's account as of the
 8 computation date for which the adjusted contribution rate was
 9 computed, and the employer's contribution rate shall be further
 10 adjusted accordingly. However, a payment made more than 120 days
 11 after the beginning of a calendar year shall not affect the
 12 employer's contribution rate for that year.

13 Section 2. This amendatory act shall not take effect unless
 14 all of the following bills of the 85th Legislature are enacted
 15 into law:

16 (a) House Bill No. 4815.

17 (b) House Bill No. 4817.

18 (c) Senate Bill No. 68.

19 (d) Senate Bill No. _____ or House Bill No. 5224 (request
 20 no. 04204'89 *).

21 (e) Senate Bill No. _____ or House Bill No. 5228 (request
 22 no. 04206'89 *).

23 (f) Senate Bill No. _____ or House Bill No. 5222 (request
 24 no. 04207'89 *).

25 (g) Senate Bill No. _____ or House Bill No. 5229 (request
 26 no. 04208'89 *).

- 1 (h) Senate Bill No. _____ or House Bill No. 5226 (request
 2 no. 04209'89 *^{*}).
 3 (i) Senate Bill No. _____ or House Bill No. 5230 (request
 4 no. 04210'89 *).
 5 (j) Senate Bill No. _____ or House Bill No. 5225 (request
 6 no. 04211'89 *^{*}).
 7 (k) Senate Bill No. _____ or House Bill No. 5231 (request
 8 no. 04212'89 *^{*}).
 9 (l) Senate Bill No. _____ or House Bill No. 5223 (request
 10 no. 04213'89 *^{*}).
 11 (m) Senate Bill No. _____ or House Bill No. 5227 (request
 12 no. 04216'89 *).