SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

Senate Bill 97
Sponsor: Senator Doug Cruce
Committee: Human Resources and Senior Citizens

Date Completed: 7-20-88

SUMMARY OF SENATE BILL 97 as introduced 3-4-87:

The bill would amend the Michigan Employment Security Act to:

- Provide for legislative oversight of the administrative fund created under the Act.
- Increase the size of the Michigan Employment Security Commission (MESC) by one member.
- Establish standards for adoption of a policy decision by the MESC.
- Require prior MESC approval of a contract for equipment of $25,000 or more, or for personal services of $5,000 or more.
- Require two-thirds of all MESC meetings to be held in Lansing, and require the transfer to Lansing by October 1995 of the MESC Director, deputy directors, and bureau heads.
- Limit the tenure of the MESC Director to four two-year terms and give the Director additional responsibilities as secretary of the Commission.
- Require the MESC to submit a statement of final costs of the unemployment compensation automation project and require the Auditor General to audit that statement.
- Provide for the refund to employers of excess solvency taxes and interest.

MESC Members

The bill would increase the size of the MESC from five to six voting members, with the Director of the Department of Labor continuing to serve as an ex officio member. Members appointed after the bill's effective date would serve for three, rather than four, years. A member could continue to serve beyond the expiration of his or her term until the appointment of a successor, but not for more than 45 days after the term expired. For members appointed after the bill took effect, at least three would have to be from outside the metropolitan statistical area of a city with a population exceeding 500,000 (Detroit), with at least one member of the employer interests and one member of the employee interests representing the rest of the State. That requirement could be waived, however, to permit one additional appointment of a Detroit resident if the Governor submitted a memorandum explaining the need for the appointment to the chairperson of the Senate committee that considers gubernatorial appointments. Three members, rather than two, would represent employer interests, and three would represent employee interests. Members also would have to represent the diverse economic interests located in this State. Not more than one member could be from the same segment of employer or employee interests.

Rules

The bill specifies that the Commission would be subject to the Administrative Procedures Act (APA). Rules would have to be promulgated by the Commission under the authority of the Employment Security Act in the case of any action of the MESC that would affect the rights and obligations of the public, including any regulation, statement, standard policy, ruling, or instruction of general applicability that implemented or applied the Act as enforced by the Commission, or that prescribed the organization, practice, or procedure of the Commission pursuant to the Act. Rules would not have to be promulgated in the case of any of the exceptions enumerated in Section 7 of the APA.

Policy Decisions

The number of members needed to constitute a quorum would be increased from three to four, and a quorum would be required in order to change an existing policy or establish a new policy. Adoption of a policy decision by the Commission would require the affirmative vote of four members, although that number would be reduced to three if one or more members from each interest were disqualified or absent. If more than one member were prevented from voting due to a conflict of interest, the quorum requirement would be reduced accordingly. Conflict of interest would be determined by the member using the standards set forth in MCL 15.342.

The Commission would be required to meet at least 36 times annually, with at least two meetings each month and at least two-thirds of all meetings to be held in Lansing. Special meetings could be held at the call of the chairperson. An agenda, including any review material required for a particular meeting, for each regular meeting would have to be sent to each commissioner at least two business days before the date of the meeting.

A staff recommendation for a policy decision and the supporting information for that decision would have to be provided to each member at least five days before the meeting at which the recommendation was to be acted upon. Information of a general nature pertaining to MESC business would have to be supplied to all members at the same time. Two or more members could request the full Commission to review any interpretation or application of Commission policy by staff, except for individual benefit determinations. If review were requested, that policy interpretation or application would be suspended until it was affirmed or rejected by a majority vote of all the members.

OVER

MESC policy could be finally determined by the Commission only at official Commission meetings, which would have to be open to the public. Any policy finally determined by the MESC would not be subject to review by Commission members until two years after the date the policy was adopted. After that date, two or more members could request a review, and the policy would be suspended until it was affirmed or rejected by a majority vote.

The MESC would be required to keep an official Commission policy manual which contained all Commission policies. In taking official action, the MESC would have to designate those actions that were to be contained in the manual. The manual would have to be available for inspection at any reasonable time to any member of the public and copies would have to be available for the staff at all times.

Within 90 days after the close of a fiscal year, the Commission would have to submit to the Governor, the Director of the DMB, and the chairpersons of the Senate and House committees that consider unemployment compensation legislation, the financial statement, prepared in accordance with generally accepted accounting principles, of the operation of the agency required by MCL 18.1492.

Personnel/MESC Director

By October 1, 1995, the MESC would be required to have completed its transfer to Lansing of at least the office of the Director, each deputy director, and the head of each bureau. A new individual hired within the Commission's central administrative personnel who increased the staff level above that level maintained on October 1, 1987, would have to be located in Lansing.

An administrative officer would have to be appointed by a vote of four, rather than three, of the members, and would serve at the pleasure of the Commission but for not longer than two years. The Director could not serve more than four two-year terms. He or she could be removed from office after notice and hearing only for misfeasance, malfeasance, or nonfeasance in office. Appointments made by the Director would be subject to civil service rules. The Director would be responsible to the Commission for the content of any reports, informational booklets, or other instructions issued for public information, or for any other information released to the public by him or her or his or her employees and assistants. Any change in existing organizational lines, any proposed changes in existing policy, or any new programs would have to be submitted by the Director to the Commission for approval.

In addition to his or her other responsibilities, as secretary of the Commission the Director would be required to do the following:

- Prepare an agenda for each Commission meeting and furnish a copy to each commissioner as required by the bill.
- Regularly attend each Commission meeting.
- Arrange for verbatim transcripts of any meeting of the Commission if requested by two or more members.
- Prepare accurate summary minutes of Commission meetings.
- Prepare correspondence necessary to carry out the Commission's official acts.
- Perform other secretarial duties as required.

Automation Project Costs/Refund

Within 45 days after the bill's effective date, the Commission would be required to submit to the Legislature, the DMB, and the Auditor General a complete statement of final costs of the unemployment compensation automation project. The statement would have to be prepared in accordance with generally accepted accounting principles and a letter representing that fact would have to accompany the statement. The costs could not contain estimates and could not include any costs incurred after September 31, 1985, and they would have to be supported by formal accounting records and properly documented. For the purpose of determining that proper costs were allocated to the project, in conjunction with the DMB the Auditor General would have to conduct an audit of the statement by September 30, 1987.

Employers liable for the solvency tax for 1983, 1984, and 1985 would have to be paid $22,383,000 on a pro rata basis from excess solvency taxes and interest on contributions, penalties, and damages collected under the Act in the contingent fund. Payment would have to be made by October 1, 1987, or with interest as soon as possible after that date. (The rate of interest would be 1% per month.) If the amount available for payment were less than the amount owed, payments would have to be made continuously each year, within six months after the end of the fiscal year, until the entire amount owed had been paid. Until that amount was fully paid, the Commission could not use funds in the contingent fund for any purpose other than the payment of Federal interest obligations. For purposes of these provisions, the total solvency tax liability for 1983, 1984, and 1985 reported by employers as of January 25, 1986, would provide the basis for proration.

The bill also would delete the provisions under which the MESC may transfer any or all of the excess funds in the contingent fund to the unemployment compensation fund, if the Commission determines that there are more funds in the contingent fund than needed to pay interest obligations for a reasonable future period, and which require amounts transferred to be credited to employers' experience accounts.

Administrative Fund

The Act provides that money in the administrative fund that is received from the Federal government is to be spent solely for the purposes and in the amounts found necessary by the appropriate agency of the United States. Under the bill, expenditures from the fund also would have to be found necessary by the Legislature. (In other words, although funds for the administration of the MESC still would come from the Federal government, they would be subject to the legislative appropriations process and could not be spent without legislative authorization.)

MCL 421.3 et al.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would result in an expenditure increase of $5,000 per year in per diem costs for the new Commission member. The bill also would require a transfer of $22,383,000 to private sector employers who made solvency tax payments during 1983, 1984, or 1985. In addition, the bill would bring the MESC further into the State budget system by making Commission activities subject to the State procurement process and the Administrative Procedures Act. It would also require a legislative Auditor General audit of the MESC automation project. The bill also provides for an annual appropriation of all funds to be spent from the administration fund.

Fiscal Analyst: K. Lindquist