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SFA



BILL ANALYSIS

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Senate Bill 644 (Substitute S-4 as reported)
Sponsor: Senator Glenn D. Steil
Committee: Human Resources and Labor

Date Completed: 1-9-02

RATIONALE

Under the Federal Unemployment Tax Act, employers are subject to a tax equal to 6.2% of total wages paid during a calendar year with respect to employment; "employment", however, does not include service performed as an employee of a state or any of its political subdivisions. Amendments enacted in December 2000 treat employment with Indian tribes similarly. Under these changes, state laws must provide that an Indian tribe may contribute to a state's unemployment fund, or make payments in lieu of contributions. If a tribe fails to do either (or fails to post a required bond), then service for the tribe is subject to taxation under the Federal Act until the failure is corrected.

According to the Michigan Department of Consumer and Industry Services (DCIS), this State must give Indian tribes the option required under the Federal law. Section 41 of the Michigan Employment Security Act specifies those entities that are considered to be "employers" under the Act. Employers are required to pay a percentage of total wages as a contribution (unemployment tax) to the State's Unemployment Compensation Fund. Currently, the State, political subdivisions of the State, school districts, and nonprofit organizations may elect to pay reimbursements instead of contributions. Under the Act, a reimbursing employer must reimburse the State's unemployment system, on an annual basis, for unemployment claims paid, while a contributing employer is subject to a quarterly assessment of the State's unemployment tax. It has been suggested that the Act be amended to designate tribes and tribal units as reimbursing employers, and give them the option to make quarterly contributions if they wish.

CONTENT

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

- Require an Indian tribe or tribal unit to pay reimbursements instead of contributions to the Unemployment Compensation Fund, unless it elected to make contributions.**
- Provide that a tribe would lose the ability to pay reimbursements if it were in default.**
- Require a tribe or tribal unit that made reimbursement payments to post security, unless it paid less than \$100,000 in gross wages in a year.**

The bill provides that an Indian tribe or tribal unit liable as an employer under Section 41 of the Act would have to pay reimbursements instead of contributions under the same terms and conditions as all other reimbursing employers liable under Section 41, unless the tribe or tribal unit elected to pay contributions. Under the bill, the term "Indian tribe" would be defined as it is in Section 3306(u) of the Federal Unemployment Tax Act, i.e., any Indian tribe, land, nation, or other organized group or community recognized under Federal law as eligible for the special programs and services provided by the United States to Indians. "Tribal unit" would include any subdivision, subsidiary, or business enterprise, wholly owned by an Indian tribe.

An Indian tribe or tribal unit that elected to pay contributions would have to file a written request with the Unemployment Agency before January 1 of the year in which the election would be effective, or within 30 days of the bill's effective date. The tribe or tribal unit would have to determine if the election to

pay contributions would apply to the tribe as a whole, apply only to individual tribal units, or apply to stated combinations of individual tribal units. A tribe or tribal unit that paid reimbursements instead of contributions would be billed for the full amount of benefits attributable to service in the employ of the tribe or tribal unit. The tribe or tribal unit would have to reimburse the Unemployment Compensation Fund, annually, within 30 days after the final billing was mailed for the immediately preceding calendar year.

If an Indian tribe or tribal unit failed to make required payments instead of contributions, including assessments of interest and penalties, within 90 calendar days of the mailing of the notice of delinquency, the tribe immediately would lose the ability to make payments instead of contributions, unless the Unemployment Agency received full payment or collection on the required security by December 1 of that calendar year. An Indian tribe that lost the ability to make payments instead of contributions would be made a contributing employer and would not have the ability to make payments until all contributions, payments instead of contributions, interest, and penalties had been paid. The ability to make payments instead of contributions would have to be reinstated effective January 1 immediately succeeding the year in which the tribe paid these debts. If an Indian tribe failed to pay in full all contributions, payments instead of contributions, interest, and penalties within 90 calendar days of a notice of delinquency, the Unemployment Agency immediately would have to notify the U.S. Department of Labor and the Internal Revenue Service (IRS) of that delinquency. If the delinquency were satisfied, the Unemployment Agency immediately would have to notify the U.S. Department of Labor and the IRS that all contributions, payments instead of contributions, interest, and penalties had been paid.

A notice of delinquency to an Indian tribe or tribal unit would have to include information that failure to make full payment within 90 days of the date the notice was mailed would cause the tribe to lose the ability to make payments instead of contributions until the delinquency and all contributions, payments instead of contributions, interest, and penalties had been paid.

Any Indian tribe or tribal unit that made reimbursement payments instead of contributions would have to post a security if the payment of gross wages in a calendar year were \$100,000 or more. The tribe or tribal unit would have to post the security either within 30 days of the bill's effective date, or by November 30 of the year before the year for which the security was required. The security would have to be in the form of a surety bond, irrevocable letter of credit, or other banking device that was acceptable to the Unemployment Agency and that provided for payment to the Agency, on demand, of an amount equal to the security required to be posted. The required security could be posted by a third-party guarantor.

The requirement for a security would not apply to an Indian tribe or tribal unit that was expected to have less than \$100,000 per calendar year in total wage payments, as determined by the Agency. The employer would have to notify the Agency within 60 days from the date its payroll equaled or exceeded \$100,000. The security would have to be posted within 30 days of notice by the Agency of a requirement to post a security.

The amount of the required security would be 4% of the employer's estimated total annual wage payments, as determined by the Agency. Indian tribes or tribal units that had a previous wage payment history would be required to file a security equal to 4% of the gross wages paid for the 12-month period ending June 30 of the year immediately preceding the year for which the security was required, or 4% of the employer's estimated total annual wages, whichever was greater.

Any Indian tribe or tribal unit that was liable for reimbursements instead of contributions could form a group account with another tribe or tribal unit, as provided under the Act.

The bill specifies that after December 20, 2000, the term "employer" would include an Indian tribe or tribal unit for which services were performed in employment as defined in the bill, and "employment" would include services performed in the employ of a tribe or tribal unit if the service were excluded from employment under Section 3306(c)(7) of the Federal Unemployment Tax Act and were not otherwise excluded from employment under the Michigan Employment Security Act. (Section 3306(c)(7) excludes services

performed in the employ of an Indian tribe from the definition of "employment" in the Federal Act.)

MCL 421.13I

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Recent changes in Federal law treat Indian tribes in the same manner as states and their political subdivisions regarding unemployment taxes. Governmental entities, including Indian tribes, are not subject to Federal unemployment taxes but must have the option, under state law, to contribute to a state's unemployment fund or to make payments in lieu of contributions. The bill would include an Indian tribe or tribal unit as an employer under the Michigan Employment Security Act, and designate a tribe or tribal unit as a reimbursing employer unless it chose to be a contributing employer. This means that a tribe or tribal unit, like the State and its political subdivisions, would not have to make quarterly unemployment tax payments but instead would repay the State, annually, for the actual cost of unemployment claims. The bill, then, would bring the Act into conformity with the Federal Unemployment Tax Act. At the same time, the bill would relieve Indian tribes of excessive unemployment tax liability. Reportedly, for most tribes, contributing employer status has meant that they actually have paid more money into the system than has been paid out for them in claims. This is so because contributions are calculated on a percentage basis and Indian tribes evidently have a relatively low number of claims for unemployment.

Opposing Argument

The bill would require a tribe or tribal unit that made reimbursement payments instead of contributions to post a surety bond, irrevocable letter of credit, or other security device acceptable to the Unemployment Agency. The Federal Act does not require states to make Indian tribes post security. Further, this requirement is not imposed on political subdivisions of the State, and it would be unfair and unnecessary to place this restriction on Indian tribes. Since a tribe that defaulted in its payment would become a

contributing employer, under the bill, and it would be in a tribe's interest to remain a reimbursing employer, there would be sufficient incentive for the tribe to fulfill its obligations without posting a security. Moreover, the security requirement would ignore tribes' unique status as sovereign governments.

Response: The State does not require its political subdivisions to post a security because it has methods of collecting, such as withholding revenue sharing or grants, if a political subdivision fails to pay. If a tribe failed to pay required reimbursements, the State would be severely limited in its ability to collect what was owed. In addition, the Federal law specifically permits states to require a tribe to post bond or take other measures to assure payments.

Opposing Argument

The bill provides that an Indian tribe would lose its ability to make reimbursing payments if it, or one of its tribal units, failed to make a payment. The entire tribe should not lose its status as a reimbursing employer because of the failure of a tribal unit to make required payments. This provision should be removed from the bill.

Opposing Argument

The amendments to the Federal Act specifically state that they apply to services performed on or after December 21, 2000. Although the bill's definition of "employment" would be retroactive to that date, the bill would not require the State to repay or credit tribes for the amount of money they paid into the unemployment fund in excess of the amount of benefits that would have been charged to them as reimbursing employers. Indian tribes have been consistent contributors to the unemployment system, and should receive the status of reimbursing employer retroactive to the date of the Federal amendments.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.