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SFA

BILL ANALYSIS

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Senate Bill 644 (as introduced 9-20-01)
Sponsor: Senator Glenn D. Steil
Committee: Human Resources and Labor

Date Completed: 10-15-01

CONTENT

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

- Extend the Act to employment with an Indian tribe or tribal unit.**
- Allow an Indian tribe or tribal unit to pay reimbursements instead of contributions to the Unemployment Compensation Fund.**
- Require a tribe or tribal unit that elected to make reimbursement payments to post security.**
- Provide that failure to make required payments would exclude a tribe or tribal unit from being considered an "employer".**

The bill provides that an Indian tribe or tribal unit liable as an employer under Section 41 of the Act would have to pay contributions under the same terms and conditions as all other employers liable under Section 41, unless the tribe or tribal unit elected to pay reimbursements instead of contributions. (Section 41, which the bill would amend to include a tribe or tribal unit, 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.) 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 reimbursements instead of contributions would have to file a written request with the Unemployment Agency at least 30 calendar days before January 1 of the year in which the election would be effective; the election would be effective on January 1. The tribe or tribal unit would have to determine if the election to pay reimbursements 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 elected to pay reimbursements would be billed for the full amount of benefits attributable to service in the employ of the tribe or tribal unit, on the same quarterly schedule as other employers that elected to make reimbursement payments in lieu of contributions. (Currently, the State, political subdivisions of the State, school districts, and nonprofit organizations may elect to pay reimbursements instead of contributions.)

If an Indian tribe or tribal unit that elected to pay reimbursements failed to make required reimbursement payments, including assessments of interest and penalties, within 90 calendar days of the mailing of the billing, the tribe or tribal unit would lose the option to pay reimbursements instead of contributions for the immediately succeeding tax year, unless the

Unemployment Agency received full payment before the date it issued determinations of contribution rates for the immediately succeeding tax year after the failure to pay. An Indian tribe or tribal unit that lost the option to pay reimbursements would have the option reinstated as of the next date that the election could be made if, for at least 24 months before that date, all contributions were submitted in a timely manner, and if no contributions, payments instead of contributions, interest, or penalties remained outstanding.

A notice of payment and a report of delinquency to an Indian tribe or tribal unit would have to include information that failure to make full payment when due would cause the tribe or tribal unit to be liable for taxes under the Federal Unemployment Tax Act, the tribe or tribal unit would lose the option to make payments in lieu of contributions, and the tribe or tribal unit would no longer be considered an employer under Section 41.

Any Indian tribe or tribal unit that elected to make reimbursement payments instead of contributions would have to post security in a manner and amount prescribed by rules promulgated by the Unemployment Agency, before the effective date of the election.

The bill specifies that after December 20, 2000, the term "employer" would include an Indian tribe or tribal unit for which employment services were performed in employment as defined in the bill; and after that date "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.) A tribe or tribal unit would cease to be an employer, and service performed for a tribe or tribal unit would cease to be considered employment, if the tribe or tribal unit failed to make a required payment, including a payment of interest and penalties, after all collection activities considered necessary by the Unemployment Agency were exhausted, and if the tribe or tribal unit had been notified of its delinquency and that the delinquency could result in its no longer being considered an employer or cause service performed for it no longer to be considered employment.

The Unemployment Agency would have to notify the Internal Revenue Service of the United States Department of Treasury and the United States Department of Labor of any termination or reinstatement of liability of a tribe or tribal unit; and notify them if service performed ceased to be considered employment or were subsequently considered employment.

MCL 421.41 et al.

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.