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FISCAL IMPACT STATEMENT

LS 6173 | **NOTE PREPARED:** Feb 24, 2010
BILL NUMBER: SB 23 | **BILL AMENDED:** Feb 23, 2010

SUBJECT: Unemployment Contribution Rates.

FIRST AUTHOR: Sen. Hershman | **BILL STATUS:** As Passed House
FIRST SPONSOR: Rep. Niezgodski

FUNDS AFFECTED: GENERAL | **IMPACT:** State & Local
X DEDICATED
FEDERAL

Summary of Legislation: (Amended) *School and Local Units Controlled Projects:* The bill changes the minimum cost of certain controlled projects that may be subject to the local public question process whenever the statewide average unemployment rate in the previous calendar year for the construction industry is 10% or higher.

Alternative Base Period: The bill establishes an alternative method of determining the base period for unemployment compensation benefits.

Maximum Benefit: The bill removes the cap on the amount of wage credits. It limits the amount of an individual's benefit to 55% of the state's average weekly wage.

Family Illness or Disability: The bill provides that an individual who is receiving unemployment benefits may restrict the individual's availability for work because of the individual's need to address matters that qualify as illness or disability of the individual or the individual's spouse, minor child, or parent. The bill also provides that an individual is not disqualified for waiting period or benefit rights because the individual separated or was discharged from employment because of illness or disability of the individual or the individual's spouse, minor child, or parent.

Jury Duty: The bill provides that an otherwise eligible individual may not be denied unemployment benefits or determined not able, available, and actively seeking work, because the individual is responding to a summons for jury service. It requires the individual to obtain from the court proof of the individual's jury service and provide to the Department of Workforce Development (DWD or Department), in the manner the department prescribes by rule, proof of the individual's jury service.

Training UI Benefit: The bill provides for a training benefit.

Worker Classification: The bill provides that an individual performing services for a contractor or subcontractor on a construction project is considered to be an employee of the contractor or subcontractor, with certain exceptions. It provides for investigations of the employment relationship between an individual and a contractor or subcontractor by the Department of Labor, for certain procedures to be followed in investigations, and for a civil penalty to be assessed by the Department of Labor for the failure to properly classify individuals as employees. The bill also provides that certain information pertaining to employee classification shared among certain state agencies is confidential. It prohibits the awarding of contracts for certain public work projects to a contractor or subcontractor for four years after the contractor or subcontractor is found to have committed certain recurring improper classifications.

HEA 1379 -2009 Provisions: The bill removes provisions that:

1. provide that reimbursable employers pay only the portion of extended benefits not reimbursed by the federal government;
2. require that extended benefits be paid for at least 13 weeks after a determination that the state "on" indicator is in effect;
3. change the "off" indicator to the maximum allowable under federal law and provides an additional "on indicator" under which extended benefit periods may be triggered;
4. increase the total extended benefit amount payable to an individual for extended benefit periods beginning in a "high unemployment period"; specify that the additional "on" indicator expires on the later of December 5, 2009, or the week ending four weeks before the last week for which federal sharing is authorized by the federal American Recovery and Reinvestment Act of 2009 (Act); increase the taxable wage base from $7,000 to $9,500;
5. expand the definition of an "employing unit" to include all forms of legal entities;
6. add restrictions on an employer's ability to create a new experience account (account) for purposes of reducing the employer's contribution rate;
7. provide for a new tax rate schedule effective in 2010;
8. provide that the term "effort to secure full-time work" includes submitting at least one application for work each week that the individual is claiming benefits;
9. permit the Department to waive the job search requirement in certain circumstances or when requiring compliance with the requirement is inconsistent with the purposes of unemployment insurance law;
10. provide that as conditions precedent to the payment of benefits to an individual for benefit periods established on and after January 1, 2010: (A) the individual must have established, after the last day of the individual's last base period wage credits equal to at least 1.5 times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and (B) the individual must have established wage credits in the last two calendar quarters of the individual's base period in a total amount of not less than $2,500 and an aggregate in the four calendar quarters of the individual's base period of not less than $4,200;
11. provide that the definition of "discharge for just cause" includes the violation of a rule regarding attendance;
12. reduce the maximum benefit amount of an individual's current claim by 25% as a penalty for an individual's first separation from employment under disqualifying conditions or first failure to apply for or accept suitable work with additional reductions in an individual's maximum benefit amount of 15% for the second separation or failure and 10% for the third and each subsequent separation or failure;
13. provide that work is not considered unsuitable during the fifth through the eighth consecutive week

of claiming benefits if the work pays not less than 90% of the individual's prior weekly wage work;

14. provide that work is not considered unsuitable after eight consecutive weeks of claiming benefits if the work pays not less than 80% of the individual's prior weekly wage
15. expand the definition of "gross misconduct" for which an individual's wage credits are canceled;
16. provide that the employer has the burden of proof that a discharged employee's conduct was gross misconduct, and allows evidence that the employer filled or maintained the position or job held by a discharged employee after the employee's discharge;
17. permit evidence that a discharged employee has not been prosecuted or convicted for the conduct;
18. provide that if evidence is presented that an action or requirement of the employer may have caused the conduct that is the basis for the employee's discharge, the conduct is not gross misconduct;
19. provide that lawful conduct not otherwise prohibited by an employer is not gross misconduct;
20. expand the types of information a notice of a claim for unemployment benefits (claim) must provide;
21. require the Department to establish an unemployment claims compliance center;
22. charge half of the benefits paid to an employer's account if the employer fails to respond to a request by the Department for information necessary to make a determination concerning a claim and the employer eventually prevails in the appeal, and provide for a credit to the employer's account equal to the amount of any overpayment recovered;
23. require the Department to provide annually certain training to all administrative law judges, review board members, and other individuals who adjudicate claims;
24. require the Department to regularly monitor the hearings and decisions of individuals who adjudicate claims to ensure that the hearings and decisions strictly comply with the law, and provide for department disciplinary action up to and including termination for an individual's failure to do so;
25. authorize the Department to charge a reasonable processing fee not to exceed $2 for records concerning an individual's last known employer that must be disclosed by court order; and
26. require the unemployment insurance board to transfer from the Special Employment and Training Services Fund (Special Fund) to the Unemployment Insurance Benefit Fund (Fund) amounts in the Special Fund that exceed $8.5 million. It restores the requirement that a felony or a Class A misdemeanor may constitute gross misconduct only if the felony or misdemeanor is admitted by the individual or has resulted in a conviction. It also reinstates a repealed provision concerning witness fees.

The bill also repeals:

1. the Unemployment Insurance Oversight Committee;
2. the Hoosier Workers First Training Program; and
3. a provision that permits an employer with a debit reserve ratio to elect once to make a voluntary contribution to the fund and receive a credit to the employer's account equal to 250% of the amount of the voluntary contribution.

Effective Date: Upon passage; January 1, 2010 (retroactive); July 1, 2010.

Explanation of State Expenditures: (Revised) *Employer Tax Rates:* The provision repealing the new rate schedule and taxable wage base would not affect the state expenditures to the Unemployment Insurance Benefit Fund since the state is a reimbursable employer.

Compliance Center: Repealing the Unemployment Claims Compliance Center would not have a saving since the federal government said that the implementation would make the state noncompliant and DWD has not implemented the center.

Alternative Base Period: The establishment of an alternative base would have a minor impact on the state as an employer, but would increase the expenditures from the Unemployment Insurance Trust Fund. The estimates for the increase in fund expenditures varies from $25.5 M by the National Employment Law Project to $29.1 M by the DWD.

Maximum Benefit: Based on the average weekly wage of $728.13 for the 1st quarter of CY 2009, the maximum UI benefit would be about $400.47. The current maximum weekly benefit is $390. The average weekly benefit is about $294, and about 42% of claimants are receiving the maximum benefit. Based on the CY 2009 claims additional expenditures from the UI Trust Fund could be about $32.7 M.

Family Illness or Disability: The additional cost to the UI Fund, assuming an approximate 1% increase in claims, based on the CY 2009 data ,would be about $18 M annually. The estimates of the additional cost to the UI Fund varies from $2.5 M by the National Employment Law Project to $32 M by the Department of Workforce Development.

Jury Duty: The impact on the state as an employer would be minor. The impact on the UI Trust Fund would also probably be minor.

Training UI Benefit: The bill provides for a training benefit. It is unknown how many may receive benefits by enrolling in a training program after they have exhausted their benefits. The impact would depend on the length of the training program and the number of claimants choosing the training. If 5% of the claimants that left the unemployment roll in CY 2009 chose to apply for five weeks of training, the cost to the UI Fund would be about $56.5 M.

Worker Classification: The impact on the Department of Labor will depend on the number of complaints filed. The Department of Labor would also be able to issue cease work orders for projects for which the contractor has misclassified employees. The bill's requirements represent an additional workload on the agency outside of the agency's routine administrative functions, and existing staffing and resource levels, if currently being used to capacity, may be insufficient for full implementation. The Department of Labor reports that they would need four additional investigators at $45,855, an assistant at $36,800, an administrative law judge, and a court reporter two days a month at $27,300, a part-time attorney from the Attorney General's office to prosecute cases three days a week, and about $33,800 in miscellaneous costs. The increase in cost would be about $321,320 annually. The additional funds and resources required could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

The bill establishes the nonreverting Employee Classification Fund for the purposes of administering these provisions, investigating contractors and agents of contractors, and for funding other expenses incurred in carrying out the duties of the department regarding employee classification. The fund consists of civil penalties collected for employee classification violations.

The bill provides for the Department of Labor, the Department of Workforce Development, and the Worker's Compensation Board to develop a joint computer system in order to share information on employee classification information by January 1, 2011. There could be some additional cost with developing the system to share information. Revenue from the Employee Classification Fund could be used to develop the system.

(Revised) *Oversight Committee:* The bill repeals the Unemployment Insurance Solvency Advisory Committee. The budgets for interim study committees in recent years have been $9,500.

(Revised) *Benefits & Claims:* The bill repeals the requirement that a claimant file one job application weekly. It also removes the provision that a job is not considered unsuitable if the job pays above the state minimum and during the fifth through the eighth consecutive week of claiming benefits the work pays at least 90% of the individual's prior weekly wage and at least 80% after eight consecutive weeks of claiming benefits. The impact of removing the 25% penalty of the individual's current claim for their first separation from employment under a disqualifying condition or first failure to apply for suitable work would increase benefits. The removal of these provisions are estimated to cost about $12 M annually. The impact assumes about 1% of claimants fail to submit at least one application per week. There could be additional savings if this provision decreases the time the claimant receives benefits.

The removal of the change in the monetary eligibility guidelines to at least $2,500 in the last two calendar year quarters and $4,200 in the base period is estimated to increase benefits by about $50 M annually.

The fiscal impact of the removal of the provision that the definition of discharge for a just cause includes the violation of a rule regarding attendance should reduce expenditures from the fund. If the change resulted in a 1% reduction in expenditures, the costs would be about $15 M.

The removal of the change in the trigger for extended benefits should have no state fiscal impact.

(Revised) *Misconduct:* The removal of the expansion of the definition of gross misconduct is estimated to cost about $20 M annually. The impact assumes that about 1.5% of filed claims might be disapproved due to gross misconduct.

(Revised) *Hoosier Workers First Training Program:* The removal of the program should not have any fiscal impact since no funds were appropriated for the program.

Background: The state paid about $4.1 M in FY 2009, $4.1 M in FY 2008, and $5.9 M in FY 2007 to the Unemployment Insurance Fund as an employer.

Explanation of State Revenues: *Alternative Base Period & Family Illness or Disability & Training UI Benefit:* If the state implemented the alternative base period calculation, allow an individual to receive benefits when the individual or family member has an illness or disability, and continue to receive benefits when in approved training, the state could receive $148 M in one-time federal stimulus revenue to the UI Fund to pay UI benefits.

Employer Tax Rates: The bill would reduce the revenue to the Unemployment Insurance Benefit Trust Fund. The reduction in revenue in is estimated to be between $314 M and $357.6 M annually.

Worker Classification: The bill raises the filing fee collected by the Department of State Revenue for an independent contractor from $5 to $25. The bill would increase the revenue for the Independent Contractor Information Account in the state General Fund. The $5 filing fee has generated between $32,700 and $39,380 over the last five years. Increasing the fee to $25 would raise between $163,500 and $196,900.

Civil penalties of $1,000 per employee may be assessed by the Department of Labor on employers who

improperly classify employees and refuse to correct the problem. The revenue would be deposited into the Employee Classification Fund, and the revenue will depend on the number of violations found by the Department of Labor.

UI Voluntary Contribution: The repeal of the provision that permits an employer with a debit reserve ratio to elect once, after December 31, 2009, and before January 1, 2012, to make a voluntary contribution to the fund and receive a credit to the employer's account equal to 250% of the amount of the voluntary contribution could reduce contributions into the fund. The balance of all debit reserve ratio employers is about -$1.8 B. Each 1% of voluntary contributions employers might have made would have generated $18 M of one-time income to the fund, and employers would receive a reduction in their negative balance of about $45 M.

Background: The following is the amount states have borrowed as of February 16, 2010, from the federal government to pay unemployment benefits.

Alabama	$200,724,827.22
Arkansas	$278,833,916.95
California	$7,119,365,227.37
Colorado	$45,105,000.00
Connecticut	$295,261,478.04
Florida	$1,239,100,000.00
Georgia	$199,000,000.00
Idaho	$140,635,625.22
Illinois	$1,582,176,341.88
Indiana	**$1,649,784,846.70**
Kentucky	$661,600,000.00
Massachusetts	$41,864,979.06
Michigan	$3,447,282,333.32
Minnesota	$416,813,948.76
Missouri	$556,229,802.21
Nevada	$219,476,394.20
New Jersey	$1,209,701,783.38
New York	$2,462,228,500.81
North Carolina	$1,850,837,380.30
Ohio	$1,955,417,799.00
Pennsylvania	$2,307,662,071.16
Rhode Island	$158,971,517.00
South Carolina	$771,287,283.00
South Dakota	$12,944,423.67
Texas	$1,628,708,179.95
Virgin Islands	$11,671,975.08
Virginia	$204,192,171.00
Wisconsin	$1,130,986,340.34
Total	**$31,797,864,145.62**

For CY 2009 the Unemployment Insurance Benefit Fund received $521.4 M from employers, $0.5 M in interest, paid $1,865.3 M in benefits, and had administrative expenses of $14.9 M. The ending balance on December 30, 2009, was a negative $1,469.8 M. The loans to states from the federal government for unemployment benefits will not begin accruing interest until at least December 31, 2010.

Explanation of Local Expenditures: The impact on local government of changes to the unemployment insurance benefits and contribution rates would be as an employer.

Explanation of Local Revenues: *School and Local Units Controlled Projects* Under current law, a capital project is considered a controlled project if it will cost the political subdivision more than the lesser of (1) $2 M or (2) an amount equal to 1% of the total gross assessed value of property within the political subdivision on the last assessment date (if that amount is at least $1 M).

A controlled project for a school building for kindergarten through Grade 8 is subject to a referendum if the cost is more than $10 M. A controlled project for a school building for Grade 9 through Grade 12 is subject to a referendum if the cost is more than $20 M. Other controlled projects with a cost that exceeds the lesser of (1) $12 M or (2) 1% of the assessed value (but at least $1 M) are also subject to a referendum.

Under this provision, the thresholds for requiring a referendum would be increased if the previous year's statewide average unemployment rate for the construction industry is at least 10%. In that case, a referendum would be required if the cost exceeds $15 M for a kindergarten through Grade 8 project, $30 M for a high school project, or for all other projects, the lesser of (1) $18 M or (2) 1.5% of the assessed value (but at least $1 M). Projects that exceed the normal thresholds but are within the higher thresholds would be subject to the petition and remonstrance process when construction unemployment exceeds 10%. Currently, there is no construction unemployment rate calculated for the state of Indiana by DWD or the U.S. Department of Labor. The U.S. Census Bureau (on behalf of the U.S. Department of Labor) does generate monthly estimates of the national unemployment rate by occupation using the Current Population Survey.

Property tax levies used to pay debt or lease/rentals that were approved in a referendum are exempt from the property tax circuit breaker caps. If not approved through a referendum, the levy is subject to the caps. This provision could make it easier to approve some projects when construction unemployment exceeds 10%. However, the levies for these projects would be subject to the circuit breaker caps which could affect property tax collection rates for the taxing unit building the project and for all overlapping taxing units.

State Agencies Affected: DWD.

Local Agencies Affected: Local units.

Information Sources: DWD data.

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