



**House
Legislative
Analysis
Section**

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**MICHIGAN EMPLOYMENT SECURITY
ACT AMENDMENTS**

**House Bill 6109 (Substitute H-1)
Sponsor: Rep. Walter J.DeLange**

**House Bill 6136 as introduced
Sponsor: Rep. Deborah Cherry**

**House Bill 6160 with committee amendments
Sponsor: Rep. William Byl**

**House Bill 6193 as introduced
Sponsor: Rep. Michael Prusi**

First Analysis (11-20-96)

Committee: Human Resources and Labor

House Bills 6109, 6136, 6160 and 6193 (11-20-96)

THE APPARENT PROBLEM:

The Michigan Employment Security Commission has requested a number of amendments to the Michigan Employment Security Act (MESA) to address a number of primarily administrative issues.

THE CONTENT OF THE BILLS:

The bills would amend the Michigan Employment Security Act as follows:

House Bill 6109 (MCL 421.8, 421.17, and 421.19) would eliminate the currently required annual report to the governor by the Michigan Employment Security Commission (MESC) and would statutorily authorize the MESC's current interpretation of procedures for calculating the ten percent reduction in employers' unemployment taxes when the unemployment compensation fund balance reaches certain levels. The bill also would repeal an obsolete provision, added by Public Act 155 of 1977, that requires the MESC to provide two reports to the governor and the legislature that include the contribution rates assigned to employers for calendar years 1978 and 1979, by type and size of employer, and the total revenue, benefit payments and fund balance as of September 30 of each of those two years.

Currently, the MESC is required to submit an annual report to the governor, which it also must make available to the public, that contains certain information. The report must cover the administration and operation of the

MESC during the preceding fiscal year, and may make recommended amendments to the act. The report also must include the following:

** an annual audit statement prepared under the supervision of the auditor general;

** statistical data on benefits, contributions, charges to employers' rating accounts, charges to the administration fund, orders for restitution and recoveries, prosecutions, work registrations, placements, "and all other matters reflecting the operation of the commission under th[e] act";

** a statement of the condition of the nonchargeable benefits account, its classified transactions and its contingent liabilities as specified in the act's definition of "adjusted balance," and showing the number of the employer experience accounts showing negative balances and the amounts of those balances (classified by the industry, by the annual total and annual taxable payroll, by amount of negative balance, and by the duration of coverage under the act of the employers involved).

The bill would delete the requirement for this annual report.

In addition, the bill would make the following changes to reductions in employers' unemployment insurance tax rates that depend on the unemployment insurance fund balance. Public Act 142 (enrolled Senate Bill 322) of

1995, among other things, both reduced unemployment taxes on employers and provided for a further ten percent reduction in employer taxes when the unemployment compensation fund reaches certain levels. More specifically, in the case of employers who pay more than the minimum rate for at least four years (beginning after December 31, 1995), whenever the unemployment compensation fund balance equals or exceeds 1.2 percent of the aggregate amount of all taxable employers' payrolls for the 12-month period ending on June 30 (the "computation date"), the act provides for either a reduction of each component of the employer's tax rate by ten percent or a deduction of one-tenth of one percent from the employer's total tax rate, whichever results in a lower tax rate.

The bill would amend the act so that when the three components of an employer's tax rate were reduced by ten percent, the resulting quotients would be rounded up to the next higher multiple of one-tenth of one percent if they weren't an exact multiple of one-tenth of one percent after the ten percent reduction. The bill would keep the second option (of deducting one-tenth of one percent from the employer's contribution rate), and would add a third option: reducing the contribution rate by ten percent (and rounding the resulting quotient up to the next higher multiple of one-tenth of one percent if it were not an exact multiple of one-tenth of one percent). The bill would continue to require that the method that resulted in the lowest tax rate to the employer be used.

House Bill 6136 (MCL 421.44) would allow employers with supplemental unemployment benefit (SUB) plans to administer their own SUB plans, or continue to have a third party administer these plans, without the benefits distributed under such programs being treated as wages under the act's definition of "remuneration." More specifically, the bill would include as an exemption to the act's definition of "remuneration" "money paid by an employer to a worker under a supplemental unemployment benefit plan under section 501(c) of the Internal Revenue Code, regardless of whether the benefits [we]re paid from a trust or by the employer."

House Bill 6160 (MCL 421.4, 421.15 and 421.24) would eliminate the current requirement that the MESC mail assessments (for failure to pay, or late payments of, required payments, penalties, forfeitures, or interest) and determinations of employers' terminations by registered or certified mail, and instead would require that they be sent by first class mail. In addition, the bill would reduce the number of newspapers in which MESC administrative rules notices would have to be published. Instead of being required to publish in each of the state's 18 congressional districts, the MESC would be required to publish these notices in at least three newspapers of general circulation

in the state, at least one of which was in the Upper Peninsula.

House Bill 6193 (MCL 421.32, 421.32a, and 421.38) would move certain existing statutory language in the act providing for "by-pass" of redetermination and Board of Review appeals from one section of the act to sections of the act which deal with those kinds of appeals.

Under Section 32 of the MESA, when someone makes a claim for unemployment benefits, the commission designates representatives who must ("promptly") examine the claim and make a determination ("on the facts"). A claimant (or interested party) may file an application for a redetermination "in accordance with section 32a." This section also says that "Notwithstanding any other provision of this act, if both parties or their authorized agents or attorneys agree, the claimant and the employer may bypass redetermination and the board of review to request circuit court review of a determination by the referee." Section 32a says that when the MESC receives an application for review of a determination (or a request for transfer to a referee for a hearing), the commission must review the determination and either issue a redetermination or transfer the matter to a referee for a hearing. The commission's redetermination is final unless an appeal is filed with the commission for a hearing on the redetermination before a referee ("in accordance with section 33"). The commission may decide to reconsider a prior determination or a redetermination, and then either issue a redetermination or transfer the matter to a referee for a hearing. Section 38 deals with judicial (circuit court) review of "questions of fact and law on the record made before a referee and the board of review involved in a final order or decision of the board". Orders of decisions of hearing referees may be appealed directly to the circuit court if the claimant and the employer or their authorized agents or attorneys agree to do so by written stipulation filed with the referee. The commission is considered to be a party to any judicial action involving orders or decisions of the board of review or a referee, and appeals from the court's decisions may be made as provided by law for appeals from the circuit courts.

The bill would delete the circuit court review provision in Section 32, and would amend Section 32a to say that, in addition to the existing transfer provisions of the section (that is, by the commission to a referee), "both of the following may apply": (a) If both the claimant and the employer agree[d], the matter [could] be transferred directly to a referee in cases involving the payment of unemployment benefits; and (b) if both the commission and the employer agree[d], the matter [could] be transferred directly to a referee in cases involving either unemployment contributions or reimbursements in lieu of contributions. Finally, the bill would amend Section 38 to

add that a hearing referee's order or decision involving an employer's contributions or payments in lieu of contributions under the act could be appealed directly to the circuit court if the employer and commission executed and filed with the hearing referee a written stipulation agreeing to the direct appeal to the circuit court.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bills would make a number of changes to the Michigan Employment Security Act requested by the Michigan Employment Security Commission. House Bill 5109 would eliminate existing statutory requirements for an annual report of statistical information which the commission reports is extremely difficult for the agency to compile and which reportedly has very little application. The agency says that it will continue to provide this information free upon request, but in a different form. The bill also would amend the act to codify what the agency reports is its current interpretation of Public Act 142 (enrolled Senate Bill 322) of 1995, which amended the MESA to reduce employers' unemployment insurance taxes, relating to the rounding of the ten percent tax reduction required by the act when the unemployment compensation fund balance reaches certain levels. Public Act 142 did not specify the rounding up of employer tax components when applying the ten percent rate reduction, so in 1996 the MESC made an interpretation that they believe to be consistent with its understanding of the intent of the act, rounding the ten percent tax reduction in the same manner as provided in normal rate computation. The bill would change the law to reflect that interpretation and to add another option to ensure that the rate reduction was as close to ten percent as possible.

The MESC reports that some employers who have their own supplemental unemployment benefit (SUB) plans would like the option of administering them as a means of saving administrative expenses. However, apparently because of an attorney general's opinion issued in the 1950s, some employers are concerned that, without a statutory change, if they issued SUB payments, these payments might be interpreted as "remuneration" under the MESA, and thus be subject to unemployment taxes. House Bill 6136 would make it clear that employer administration of their own SUB plans would not fall under the act's definition of "remuneration," and, therefore, would not affect either unemployment benefits or employer taxes.

The MESC reports that currently it mails out approximately 15,000 assessments each year and 20,000 determinations of employers' terminations. The MESA requires that these be mailed by either registered or certified mail. The agency says that these mailings are time-consuming and labor intensive, and believes that they are unnecessary. House Bill 6160 would eliminate this special mailing requirement, allowing the MESC instead to mail assessments and determinations by first-class mail. The agency reports that it would continue to mail levies and other critical correspondence by certified mail. The bill also would eliminate the current requirement that the MESC publish notices of administrative rules changes in newspapers in each of the state's congressional districts (a total of 18), and instead allow it to follow Administrative Procedures Act procedures and publish such notices in three newspapers of general circulation in the state, at least one of which would be in the Upper Peninsula.

Finally, the MESC reports that there could be some confusion over the way that current "by-pass" procedure language is placed in the MESA such that some people might interpret the placement of these provisions to mean that someone could by-pass both the referee hearing and the board review and go directly to the circuit court.

POSITIONS:

The Department of Consumer and Industry Services supports the bills. (11-19-96)

The AFL-CIO supports the bills. (11-19-96)

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.