

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 7, 2005

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB306 by Duncan (Relating to the disqualification of certain persons for unemployment benefits.), **As Introduced**

The provisions of the bill amend the Labor Code by excluding Judicial Briefing Attorneys from eligibility to receive unemployment insurance benefits if they performed this service for not more than one year and had notice at the time the services began that the individual's services would not exceed one year.

According to the Texas Workforce Commission (TWC), the U.S. Department of Labor (DOL), in a February 7, 2005 letter to the TWC Executive Director stated that, "If state law (1) permits the denial of services performed for governmental entities, when those services are required to be covered or (2) cancels wage credits contrary to federal law, the result is, after an opportunity for a fair hearing, the loss of certification for tax credits for all employers (mostly private employers) liable for the taxes required under Sec. 3301, FUTA. The conformity issue could result in all employers in Texas, subject to the FUTA tax, to lose the 5.4 percent credit against the federal unemployment tax of 6.2 percent. In addition, the State could lost its year-end certification and receipt of grant funds for the UC program." According to TWC, state agencies and political subdivisions are exempted from the payment of FUTA, accordingly state agencies would not be impacted by the employer tax increase.

The bill would take effect September 1, 2005.

Methodology: According to the Texas Workforce Commission (TWC), it is assumed that all Texas employees are paid at least \$7,000 per year (\$3.37 per hour) and there are 9,329,180 covered employees in Texas (Texas LMI Tracer, 2nd quarter 2004 Average Employment).

Currently, the Federal Unemployment Tax Act (FUTA) rate and cost for states before the 5.4 percent discount rate for states with conforming Unemployment Insurance (UI) statutes is 6.2 percent (FUTA Rate) X \$7,000 (Federal Unemployment Insurance Tax Wage Ceiling) = \$434 (Per-Employee Federal UI Annual Tax) Cost per year for employers 9,329,180 x 434 = \$4,048,864,120. The FUTA discount rate for states with conforming UI statutes is 5.4 percent (FUTA Tax Rate with Tax Credit Withdrawn) X \$7,000 (Federal UI Tax Wage Ceiling) = \$378 (New Per-Employee Federal UI Annual Tax).

The FUTA rate and cost after the discount rate for states with conforming UI statutes is applied is 0.8 percent (6.2%-5.4%) (FUTA Tax Rate with Credit) X \$7,000 (Federal UI Tax Wage Ceiling) = \$56 (Current Per-Employee Federal UI Annual Tax) Cost per year for employers 9,329,180 x 56 = \$522,434,080.

Based on TWC's analysis that the provisions of the bill would change the law to render Texas as non-conforming to UI statutes, then Texas employers' FUTA discount would be denied. The increased cost to employers would be 5.4 percent (FUTA Tax Rate with Tax Credit Withdrawn) X \$7,000 (Federal UI Tax Wage Ceiling) = \$378 (New Per-Employee Federal UI Annual Tax). According to TWC, if non-conforming legislation is passed, Texas employers would pay an additional \$378 per employee times the 9,329,180 covered employees in Texas each year to the Unemployment Trust Fund: 9,329,180 x \$378 = \$3,526,430,040.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 320 Texas Workforce Commission

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