LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 12, 2021

TO: Honorable Chris Turner, Chair, House Committee on Business & Industry

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB3656** by Turner, Chris (Relating to the classification of certain construction workers and the eligibility of those workers for unemployment benefits; providing penalties.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3656, As Introduced : an impact of $0 through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

Fiscal Year	**Probable Net Positive/(Negative) Impact to** ***General Revenue Related Funds***
2022	$0
2023	$0
2024	$0
2025	$0
2026	$0

All Funds, Five-Year Impact:

Fiscal Year	**Probable Revenue (Loss) from** ***Workforce Commission Federal Acct*** **5026**
2022	($135,440,000)
2023	($135,440,000)
2024	($135,440,000)
2025	($135,440,000)
2026	($135,440,000)

Fiscal Analysis

The bill would amend Chapters 201 and 301 of the Labor Code, regarding the Texas Unemployment Compensation Act (TUCA) and the Texas Workforce Commission (TWC), relating to the classification of certain construction workers and the eligibility of those workers for unemployment benefits; providing penalties.

Methodology

According to the Texas Workforce Commission (TWC) and an informal review of the bill by the U. S.

Department of Labor (DOL), enactment of the bill would result in a conformity issue with federal law, which requires each State to pay unemployment compensation (UC) based on services performed for certain governmental entities and nonprofit organizations. If the conformity issue were sustained, the TUCA would not be certified by the Labor Secretary and unemployment insurance (UI) administrative grants would not be issued.

Administrative Costs
According to TWC, this conformity issue would cause UI administrative grants issued from DOL to be withheld. This would result in a Federal Funds revenue loss of $135,440,000 each fiscal year. According to TWC, this amount represents the base allocation issued to Texas through a formula used by DOL based on workload data and projections reported by TWC; this does not include additional funding provided by DOL in times of very high claim volumes. TWC reports the state UI operations would end without these UI administrative grants. This analysis assumes the state would use General Revenue Funds to fill in for the lost Federal Funds which could result in a cost of $135.4 million per fiscal year.

Contributory Employer Costs
According to TWC, FUTA requires that each employer pay federal UI taxes of 6.0 percent of the first $7,000 of wages paid to each employee, which equals $420 per employee per year. If the employer pays all of its state unemployment taxes in a timely fashion, and the state's unemployment insurance law is deemed to be in conformity with federal law, the employer will be given a 5.4 percent tax rate credit. When applied, this credit brings the FUTA tax rate to 0.6 percent, which equals $42 per employee per year. As TWC and DOL have reported, enactment of the bill would make state law be out of conformity with federal law which would result in employers becoming ineligible for the 5.4 percent offset credit. This would make the effective federal UI tax rate increase from 0.6 percent to 6.0 percent. Based on information provided by TWC, this analysis assumes Texas' contributing employers tax liability would increase from approximately $678.1 million to approximately $6,780.7 million per year.

Potential Cost to Employers Affected by Legislation
TWC reports that if the Internal Revenue Service (IRS) determines the services by an independent contractor under the provisions of the bill are employment, the employer would be required to pay the full FUTA tax (6.0% on the first $7000 paid) without any credit against the tax. According to TWC, whether the services are determined to be in an independent contractor relationship under state law is not relevant to the determination by the IRS (the decision is based on federal law) therefore there may be negative tax consequences for these employers if the bill is enacted.

Unemployment Trust Fund Impact
According to research conducted by TWC staff, if this bill were to be enacted it is anticipated that the number of independent contractor construction workers eligible for UC benefits as an employee would decrease. Therefore, there would be an overall decrease to the amount of benefits paid out of the Unemployment Trust Fund but it is not anticipated to be significant.

UI Administration
According to TWC, other than the conformity issue with federal law, the cost to implement the provisions of the bill would be minimal and could be funded through existing resources.

According to the Comptroller of Public Accounts, the amounts and timing of any administrative penalty revenue are unknown and cannot be estimated.

Local Government Impact

Travis County does not anticipate a fiscal impact to the county. The fiscal impact to other units of local government is not anticipated to be significant.

Source Agencies: 304 Comptroller of Public Accounts, 320 Texas Workforce Commission

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