LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 5, 2021

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

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB4182** by Turner, Chris (Relating to the employment status of certain remote service workers.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB4182, 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 Gain/(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 add the Remote Service Marketplace Platforms Act to the Labor Code to clarify definitions, including the definitions of remote services contractor and marketplace company, and to establish conditions under which a remote service contractor is not an employee.

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. DOL has issued an informal opinion that if enacted, the provisions of this bill would not conform to the requirements of Section 3304(a)(6)(A), Federal Unemployment Tax Act (FUTA), which requires each State to pay unemployment compensation based on services performed for certain governmental entities and nonprofit organizations. If the conformity issue were sustained, the Texas Unemployment Compensation Act 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 a marketplace contractor 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.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 320 Texas Workforce Commission

LBB Staff: JMc, SZ, MB, DFR