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FISCAL IMPACT REPORT

SPONSOR: SIAC DATE TYPED: 03/13/01 HB _____
 SHORT TITLE: Unemployment Benefits for Tribal Employees SB 788/SIACS/aSFl #1
 ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative			

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 619

SOURCES OF INFORMATION

Department of Labor

SUMMARY

Synopsis of SFl #1 Amendment

Senate Floor No. 1 amendment strikes Section 4(B) Temporary Provision-Transition”. The provision was problematic for DOL as it raised a conformity issue and would have jeopardized federal funds for the Unemployment Insurance Program.

Synopsis of Substitute Bill

This legislation modifies the existing unemployment insurance(UI) compensation law to allow Indian tribes and tribal entities to choose to participate in New Mexico’s unemployment insurance program(UI), as either contributing or reimbursing employers.

Significant Issues

Failure of the Legislature to enact this bill, which in main part tracks model legislation provided by the U.S. Department of Labor, may result in the state losing money received from the US DOL to administer the UI program.

Section 4(B) “Temporary Provision – Transition,” provides that any past contributions (taxes) in excess of benefits actually paid to claimants be credited towards the tribes’ future payments. This provision, DOL says, raises a federal conformity issue, and jeopardizes the Department’s federal

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funding and New Mexico employers' Federal Unemployment Tax Act (FUTA)tax credits in the estimated amount of \$300 million annually.

Current law allows tribes and tribal entities to voluntarily participate as contributing taxpayers. Recent federal legislation has required that the states allow tribes and tribal entities to choose to become reimbursing employers, as well as contributing employers.

The legislation provides that if a participating tribe or organization fails to make required payments or reports, the tribe or organization may be removed from the program, thereby subjecting it to higher federal, as opposed to state, tax liability.

Other significant issues are that tribes and tribal entities will now be able to choose to be reimbursing employers, which may be more financially advantageous than being a contributing employer. Tribes and tribal organizations opting to participate in the UI program on any basis will be able to offer, as a benefit to employees, unemployment insurance compensation in appropriate circumstances.

Also significant is that claimants and the tribes and tribal entities will be required to proceed through the New Mexico state administrative process to obtain or contest paying benefits. The New Mexico administrative process will result in the state determining if an employee is entitled to benefits and whether a tribe or tribal entity is required to pay.

Finally, if tribes do not participate for any reason, those organizations will be subjected to higher Federal Unemployment Tax Act(FUTA) taxes.

PERFORMANCE IMPLICATIONS

The performance implications are that more employers and potentially more claimants will be included in the UI program. There will also be initially increased administrative efforts to decertify organizations which do not participate because the law is written so that tribes are automatically placed in the program and will be decertified if they choose not to participate.

There would also be an increase in the performance measurement that counts 'status determinations' of unemployment compensation claimants.

FISCAL IMPLICATIONS

DOL indicates that most of the tribes in New Mexico have opted to be covered as contributing employers. DOL reports that approximately 3500 workers remain who are not currently covered that could be affected by the new law.

If the tribes generally elect to become reimbursing employers, there will be no effect on the UI Trust Fund because the tribes will be required to reimburse the fund dollar-for-dollar the unemployment benefits paid to former workers.

To fully comply as contributing employers, tribes will pay approximately \$1.5 million per year into the trust fund. This amount, according to DOL, will have virtually no impact on the fund which is substantial and which is projected to continue to grow at a healthy rate, regardless of the inclusion of tribes and the impact of claims from tribal claimants.

DOL maintains that under current economic conditions, if all tribes opt for coverage and if there is, for

example, a 20% layoff of tribal employees, the trust fund will not be adversely affected but the amount of benefits paid will increase approximately \$4.5 million assuming each worker is entitled to the maximum benefit amount and maximum duration. Moreover, DOL explains that if there is a recession similar to what occurred in the 1980s and the tribes lay off 20 percent of their workforce, benefit amounts paid would increase by \$5 million.

ADMINISTRATIVE IMPLICATIONS

There may be an increased administrative effort, DOL claims, to decertify organizations which do not participate because the law is written so that tribes are automatically placed in the program and will be decertified if they choose not to participate. It is anticipated that this administrative burden will ease after tribes and organizations determine if they will participate and on what basis. Other than initially, tribes and organizations will be treated the same as all other employers.

Computer programs will have to be modified, as stated by DOL, to identify tribal accounts and to generate specific notices to tribes which are not in compliance. Procedures will have to be developed to handle non-compliant tribes and to provide notification to the Internal Revenue Service. Regulations will have to be drafted to handle master/member accounts, termination of coverage and liability periods.

The Temporary Provision, DOL believes is problematic. This transition clause in this proposal would create administrative difficulty in having to set up contribution paying accounts for ten days in the year 2000, close them out, and set up new reimbursable accounts beginning January 1, 2001. This would create a substantial administrative burden.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

In addition, DOL recognizes that the Temporary Provision - Transition clause in this bill conflicts with other provisions of the New Mexico Unemployment Compensation Law and with the Federal Unemployment Tax Act (FUTA) because Indian Tribes are not allowed to pay to the unemployment compensation fund an amount equal to the total benefits actually paid from the fund an amount equal to the total Benefits actually paid form the fund *between January 1, 1997 and December 21, 2000*. This provision, DOL believes would create a FUTA conformity issue therefore jeopardizing the State from losing funds for administration of the UI Program, which is funded by the US. Dept of Labor.

AMENDMENT

Delete Section 4, Temporary Provision---Transition to address DOL concerns.

BD/njw:ar