DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 08/06/2012
POSITION: Neutral

BILL NUMBER: AB 1845
AUTHOR: Solorio, Jose
RELATED BILLS: AB 1794, Williams

BILL SUMMARY: Unemployment compensation benefits: overpayment assessments: termination: income tax withholding.

This bill would amend state laws to conform to recently enacted federal legislation related to the Unemployment Insurance (UI) Program. This bill would also make technical amendments to the UI and tax collection programs administered by the Employment Development Department (EDD) to correct inconsistencies between statutes.

FISCAL SUMMARY

The cost to EDD to implement this bill are minor and absorbable within existing resources. This bill includes provisions to redirect half of the penalty revenue currently deposited into the Benefit Audit Fund (BAF) related to fraudulent UI benefit overpayments to the state's UI Trust Fund, beginning October 22, 2013. This reduction in penalty revenue to the BAF will likely eliminate the year-end transfer of the unencumbered balance of the this fund to the General Fund, resulting in a decrease to the General Fund of approximately $12 million annually.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the April 11, 2012 version are minor and do not alter our position. These amendments include:

- Clarification related to penalties assessed on employers or agents of employers for willfully making false statements, false representations, or failing to report a material fact related to the termination of a claimant's employment.
- Other technical changes.

COMMENTS

The Department of Finance is neutral on this bill because the provisions of this bill must be implemented to conform to changes in federal law. If the state does not conform to the changes in federal law, California would be at risk of losing approximately $340 million in federal funding annually used to operate the UI program and California employers would risk losing a federal tax credit resulting in an increased tax burden to employers of approximately $6 billion annually.

This bill would conform to the following changes in federal law:

Mandatory Penalty Assessment on Fraudulent Unemployment Insurance (UI) Claims

- States are required to assess a monetary penalty, of at least 15 percent of an overpayment, on claimants committing fraud in connection with state or federal UI benefits and deposit penalty revenue into the state’s UI trust fund, limiting the use of the penalty revenue to UI benefits.

Analyst/Principal (0241) J.Morozumi	Date	Program Budget Manager Lisa Ann Mangat	Date

Department Deputy Director Date

Governor's Office: By: Date: Position Approved_______
Position Disapproved

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COMMENTS (continued)

- California law currently provides a monetary penalty of 30 percent, with penalty revenue deposited into the Benefit Audit Fund. The Benefit Audit Fund supports the administrative costs of discovering and collecting benefit overpayments. Any revenues not needed to support administrative costs are transferred to the General Fund.
- Under the new federal law, the federally required 15 percent penalty would be deposited into the UI Trust Fund, beginning October 21, 2013, and the remaining penalty revenue would be deposited into the Benefit Audit Fund.

Prohibition on Relieving Employers of Benefit Charges

- Under existing state law, when overpayments are made to a claimant, a tax-rated employer's reserve account is credited for the overpayment and all employers pay a prorated share of total overpayments each fiscal year. Likewise, when overpayments are collected back from claimants, employers are credited on a prorated basis.
- Reimbursable employers do not receive a credit until overpayments are recovered.
- Under the new federal law, states are prohibited from crediting an employer's reserve account in instances where the employer failed to respond timely or adequately to a UI claim notification, causing the overpayment to the claimant. Further, reserve accounts of reimbursable employers would not be credited if the employer was determined to be at fault of an overpayment.

Reporting of Rehired Employees to the National Directory of New Hires

- Current federal law requires employers to report all newly hired or rehired workers to EDD within 20 days of the start-of-work date.
- Under existing state law and regulations, an individual is considered a "new hire" on the first day in which he or she performs services for wages. An individual is considered "rehired" if the employer/ employee relationship has ended and the returning individual is required to submit a W-4 to the employer.
- Under the new federal law, a "newly hired employee" is defined as an employee who has not previously been employed by the employer or was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days.

This bill would also make verbiage changes related to employer deposit requirements for California State Disability Insurance and Personal Income Tax withholdings to conform with changes made to sections of the federal Internal Revenue Code, which are referenced in the UI Code sections. Specifically, "banking day" would be changed to "business day" and "business day" defined as, any day other than a Saturday, Sunday, or legal holiday as recognized by the Internal Revenue Service, or a statewide legal holiday as recognized by the State of California, or any day in which the Employment Development Department is closed.

Additionally, this bill would allow an individual to cancel a claim for UI benefits during the benefit year of that claim. This measure would also clarify and specify the circumstances under which an employer or an employer's agent may be assessed a penalty for willfully making a false statement, false representation, or failing to report a material fact concerning that termination. Finally, this bill would make changes to provide consistency among statutes related to allowing employers to submit additional information related to a UI claim.

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COMMENTS (continued)

Finally, this bill incorporates changes made by AB 1794 (Williams) to Section 1088.5 of the Unemployment Insurance Code that would become operative if both bills are enacted and become effective on or before January 1, 2013 and this bill is enacted after AB 1794. AB 1794 would authorize the EDD to provide specific new employee information to the Joint Enforcement Strike Force on the Underground Economy, the Contractors' State License Board, and the State Compensation Insurance Fund for the purposes of auditing, investigating, prosecuting violations of tax and cash-pay reporting laws, and workers' compensation payroll reporting.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 2012-2013	FC	2013-2014	FC	2014-2015	Fund Code
1602/Pen Int UIDI	RV	No	P	--	P	-15,000	P	-15,000	0184
1602/Pen Int UIDI	RV	No	P	--	P	15,000	P	15,000	0871
TO0001/Transfer	RV	No	P	--	P	-12,000	P	-12,000	0184
FO0184/Transfer	RV	No	P	--	P	12,000	P	12,000	0001
7100/EDD	SO	No		----- No/Minor Fiscal Impact -----					0870

Fund Code	Title
0001	General Fund
0184	Employment Developmnt Dept Benefit Audit
0870	Unemployment Administration Fund
0871	Unemployment Fund