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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 168*
134th General Assembly

Bill Analysis

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Version: As Reported by Senate Finance

Primary Sponsors: Reps. Fraizer and Loychik

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SUMMARY

- Requires, on August 31, 2021, or as soon as possible thereafter, and again on December 27, 2021, or as soon as possible thereafter, the Director of Job and Family Services (JFS Director) to certify to the Director of Budget and Management (OBM Director), the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives the balance of amounts loaned to Ohio by the federal government for the purpose of paying unemployment benefits.
- Requires the OBM Director to remit the amounts certified, but not to exceed the available balance, from the State Fiscal Recovery Fund (Fund 5CV3) to the Unemployment Compensation Fund to the credit of the Mutualized Account.
- Specifies that the amounts remitted are appropriated.
- Requires the JFS Director to deposit the amounts remitted as cash with the U.S. Secretary of Treasury to reduce or eliminate the balance of amounts advanced to Ohio.

DETAILED ANALYSIS

Unemployment compensation advance repayment

The bill requires, on August 31, 2021, or as soon as possible thereafter, and again on December 27, 2021, or as soon as possible thereafter, the Director of Job and Family Services (JFS Director), who administers Ohio's unemployment compensation system, to certify the

* This analysis was prepared before the report of the Senate Finance Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

balance of amounts advanced to Ohio from the federal government for the payment of unemployment benefits to the following individuals:

- The Director of Budget and Management (OBM Director);
- The President of the Senate;
- The Minority Leader of the Senate;
- The Speaker of the House of Representatives;
- The Minority Leader of the House of Representatives;
- The Governor.

On receipt of the certification, the OBM Director must remit the amount certified, not to exceed the available balance, from the State Fiscal Recovery Fund (Fund 5CV3) to the Unemployment Compensation Fund. The Unemployment Compensation Fund is the fund used to pay eligible unemployed individuals benefits.¹ The bill appropriates the amount of the remittances from Fund 5CV3. The amount remitted must be credited to the Mutualized Account (the Mutualized Account is a separate account in the Unemployment Compensation Fund that is primarily used to pay benefits when an individual employer's account cannot be charged for those benefits for a variety of reasons).² The JFS Director must deposit as cash the amounts remitted with the U.S. Secretary of the Treasury to reduce or eliminate the balance of amounts advanced to Ohio.³

Background – federal advances and employer tax credit reductions

Unemployment compensation derives its origins from a federal excise tax levied on most employers in the country.⁴ Under federal law, an employer may receive a Federal Unemployment Tax Act (FUTA) tax credit of almost 90% if the employer makes specified contributions to an “approved” state unemployment compensation system. Additionally, the federal government pays a share of a state’s administrative costs to run an approved state program. Approval, however, involves state adherence to federal law requirements and voluminous U.S. Department of Labor regulations. The FUTA tax credit for employers can be reduced under certain circumstances.

Federal law permits a state’s governor, or the governor’s designee (in Ohio, the JFS Director) to apply to the U.S. Secretary of Labor to receive three-month “advances” for the

¹ R.C. 4141.09, not in the bill.

² R.C. 4141.25, not in the bill.

³ Section 215.10.

⁴ 26 United States Code (U.S.C.) 3301 *et seq.* and 42 U.S.C. 501 *et seq.*

payment of unemployment benefits if the amount of funds in a state's account in the federal Unemployment Trust Fund is insufficient to pay those benefits.⁵

FUTA requires states to repay federal advances according to specified deadlines. If a state does not repay as required, the basic penalty is a "graduated" loss of the federal tax credit for all employers in the state.⁶ Under normal conditions, an employer who regularly pays into an approved state system has a FUTA tax rate that equals 0.6% after taking the allowed tax credit (6% tax minus the 5.4% tax credit). If, for example, an employer has a taxable payroll of \$10,000, under normal conditions the employer pays only \$60 per year in FUTA taxes to the federal government ($\$10,000 \times 0.006$). If a state has an outstanding balance as of January 1 for two consecutive years, the state has until November 10 of the second year to pay off that balance. If the state does not pay off the balance by that date, the FUTA tax credit in that state is reduced by 5% of the FUTA tax. Thus, the employer in the example would pay an additional \$30 per year (approximately) in FUTA taxes if the advance made to the state remains outstanding after the deadline passes ($6\% \times 5\% = 0.3\%$; $\$10,000 \times 0.003 = \30). An employer's FUTA tax credit is reduced by an additional 5% per year for each succeeding year an advance remains outstanding, and may be subject to additional reductions beginning the third year the advance remains outstanding.⁷

Ohio began borrowing advances from the federal government in June 2020.⁸ As of June 18, 2021, Ohio's outstanding federal advance balance was approximately \$1.47 billion.⁹ Ohio employers currently are not paying an increased FUTA tax rate and receive the full FUTA tax credit.¹⁰ However, if Ohio's advances are not repaid by November 10, 2022, Ohio employers may face the graduated loss of the FUTA tax credit.

⁵ 42 U.S.C. 1321; 20 Code of Federal Regulations (C.F.R.) 606.4; R.C. 4141.43(F), not in the bill.

⁶ 26 U.S.C. 3302(c)(2).

⁷ 26 U.S.C. 3302(c)(2) and (d)(1) and Ohio Bureau of Employment Services, "Trust Fund Adequacy" 49 (1989).

⁸ Statehouse News Bureau, *Ohio Unemployment Fund Ends 2020 Borrowing \$1.2B From Feds*, <https://www.stateneews.org/post/ohio-unemployment-fund-ends-2020-borrowing-12b-feds> (accessed June 22, 2021).

⁹ U.S. Department of Labor, *UI Budget*, <https://oui.doleta.gov/unemploy/budget.asp> (accessed on June 22, 2021).

¹⁰ U.S. Department of Labor, *Historical FUTA Credit Reductions*, https://oui.doleta.gov/unemploy/docs/reduced_credit_states_2009-2020.xlsx_states_2009-2020.xlsx (accessed June 22, 2021).

HISTORY

Action	Date
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Reported, H. Finance	04-15-21
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