

- SUBJECT:** Unemployment insurance taxes paid by Indian tribes
- COMMITTEE:** Economic Development — committee substitute recommended
- VOTE:** 7 ayes — Solis, Clark, Deshotel, Homer, Luna, Seaman, Yarbrough  
0 nays  
2 absent — Keffer, McClendon
- WITNESSES:** For — *Registered but did not testify:* Bill Hammond, Texas Association of Business and Chambers of Commerce  
  
Against — None  
  
On — Steve Riley, Texas Workforce Commission
- BACKGROUND:** Before 1995, the Texas Workforce Commission (TWC) treated American Indian tribes as political subdivisions for the purpose of determining required contributions to the unemployment insurance fund. Like other political subdivisions, tribes had the option of reimbursing the state for any unemployment benefits paid to former employees of the tribe in lieu of paying unemployment insurance taxes.
- In 1995, the U.S. Department of Labor (DOL) notified TWC that the state’s policy allowing unemployment insurance fund reimbursements by tribes did not comply with DOL rules and regulations, and TWC changed the tribes’ status to conform with DOL policy. Since 1995, Texas’ three federally recognized Indian tribes (Alabama-Coushatta, Kickapoo, and Ysleta Del Sur Pueblo) have been paying state unemployment insurance taxes.
- The federal Consolidated Appropriations Act, signed into law on December 21, 2000, amended federal-state unemployment insurance laws. The changes specify that services performed in the employ of tribes are subject to state unemployment taxes and that states must offer tribes a reimbursement option. Federally recognized Indian tribes also were exempted from taxes under the Federal Unemployment Tax Act (FUTA). If a tribe failed to make

its required state unemployment tax payments or reimbursement payments, the tribe would become liable for the FUTA tax.

Labor Code, sec. 205.001(a) allows a state, political subdivision, or an instrumentality thereof to elect to pay reimbursements for any unemployment benefits paid to former employees in lieu of paying unemployment insurance taxes. TWC may terminate the right of these employers to reimburse the state if they are delinquent in their payments. The termination remains in effect for two years. Sec. 201.063(a) and sec. 201.067 exempt some activities from state unemployment insurance taxes, including:

- ! certain services in the employ of a political subdivision or instrumentality thereof;
- ! certain services in the employ of a foreign government or instrumentality thereof;
- ! service in the employ of the U.S. government or an instrumentality thereof exempt from state taxes under the U.S. Constitution; and
- ! service performed as part of an unemployment work-relief or work-training program financed in whole or in part by a governmental body.

DIGEST:

HB 2029 would amend the Labor Code to specify that services performed in the employ of tribes are subject to the state unemployment insurance tax, except for:

- ! certain services in the employ of a political subdivision, a foreign government, or an instrumentality thereof, and
- ! service performed as part of an unemployment work-relief or work-training program financed in whole or in part by a tribe.

The bill would allow an Indian tribe or its instrumentality to elect to pay reimbursements for benefits in lieu of paying unemployment insurance taxes. An Indian tribe that failed to make a required payment, including penalty and interest, within 90 days of receiving notice of the payment would lose the reimbursement option for the following tax year unless TWC received the payment in full before the date that unemployment insurance contribution rates for that year were computed. After that year, a tribe could reelect to reimburse the state if it had timely paid all of its taxes and owed no outstanding taxes, reimbursement payments, penalties, or interest.

A tribe that failed to make its required payments also would become liable for federal FUTA taxes and, after TWC had exhausted collection attempts, no longer would be subject to state unemployment insurance taxes. If a tribe paid all contributions and penalties owed to TWC, the tribe would become eligible again to pay state taxes rather than federal taxes.

Any tribe that did not elect to make reimbursements would be subject to state unemployment insurance taxes under the same terms and conditions as any other employer.

CSHB 2029 also would:

- ! specify that payments to a person based on former employment by a tribe were payable in the same amount and on the same terms as benefits paid by former employees for service to other employers;
- ! specify that tribes were responsible for reimbursing the total amount of extended benefit payments not reimbursed by the federal government; and
- ! define “Indian tribe” as under the FUTA.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS  
SAY:

CSHB 2029 is necessary to bring the state into conformity with recent changes in federal law regarding unemployment insurance. The bill’s changes simply would return Indian tribes to the same status they had in state law before 1995. The state must conform to these changes or risk losing the federal offsetting tax credit for state employers of 5.4 percent against their federal unemployment tax, resulting in a potential federal tax increase of about \$2.8 billion to Texas employers.

OPPONENTS  
SAY:

No apparent opposition.

NOTES:

The committee substitute added the provision that would allow a tribe that lost its reimbursement option to resume that option after a year. It also would require TWC to notify the DOL and the U.S. Internal Revenue Service of

each tribe that failed to make required payments, rather than informing those entities each time coverage for a tribe was terminated or reinstated. The substitute also altered the language defining employment as services performed in the employ of a tribe by adding that those services must be excluded from the definition of employment under FUTA.