SUBJECT: Excluding certain benefits paid due to a state disaster from the UI tax rate

COMMITTEE: International Relations and Economic Development — committee substitute recommended

VOTE: 8 ayes — Button, C. Morales, C. Bell, Canales, Hunter, Larson, Metcalf, Ordaz Perez

1 nay — Beckley

WITNESSES: For — (*Registered, but did not testify*: Tray Bates and Julia Parenteau, Texas Realtors; Dale Craymer, Texas Taxpayers and Research Association; Dana Harris, The Greater Austin Chamber of Commerce; John McCord, NFIB; Kelsey Streufert, Texas Restaurant Association; Thomas Parkinson)

Against — None

On — Bryan Daniel, Texas Workforce Commission

BACKGROUND: The unemployment compensation fund consists of contributions made under the Texas Unemployment Compensation Act, including from the unemployment insurance tax. The unemployment insurance tax is partially determined by the general tax rate, which is calculated according to the replenishment ratio.

Labor Code sec. 204.045 defines the replenishment ratio used to determine an employer's unemployment compensation contribution tax rate as the sum of benefits paid in the preceding year that are effectively charged to an employer and one-half of the amount of benefits paid during that period that are not effectively charged to an employer, divided by the total amount of effectively charged benefits paid in that time period.

Under sec. 204.046, a benefit is not effectively charged if it is not charged to an employer's account, is charged to an employer's account after the employer has reached maximum liability because of the maximum tax rate, or is charged to an employer's account but considered not collectible.

Sec. 204.061 specifies that the floor of the compensation fund is equal to the greater of $400 million or one percent of the total taxable wages for the four calendar quarters ending the preceding June 30 and that the ceiling of the compensation fund is equal to two percent of total taxable wages for the four calendar quarters ending the preceding June 30.

DIGEST:

CSHB 7 would exclude from the calculation of the replenishment ratio benefits paid and not effectively charged to an employer's account as a result of an order or proclamation by the governor declaring at least 50 percent of the state's counties to be in a state of disaster or emergency.

The bill would apply only to an employer's unemployment compensation contribution tax liability that accrued on or after the bill's effective date.

The 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 October 1, 2021.

SUPPORTERS SAY:

CSHB 7 would allow employers negatively impacted by the COVID-19 pandemic to financially recover and hire back employees by preventing a large increase in the unemployment insurance tax. The bill would not result in insolvency of the Unemployment Compensation Trust Fund because CSHB 7 merely would give the Texas Workforce Commission (TWC) the flexibility to spread out the replenishment of this fund from the unemployment insurance tax over several tax years instead of one.

Layoffs due to the COVID-19 pandemic resulted in more than $7 billion of non-effective charges to the state's Unemployment Compensation Trust Fund. TWC is required to maintain the trust fund at a balance equal to between one and two percent of taxable wages. Because statute contains set formulas for calculating the general tax rate on employers that incorporates this large sum of non-effective charges, Texas businesses of all sizes will see their unemployment insurance tax burdens double or even triple for the 2021 tax year in order to replenish the trust fund at the required rate. CSHB 7 would prevent employers from having to absorb this obligation in one tax year by exempting non-effective charges made during a disaster affecting more than 50 percent of the state's counties from the calculation of the replenishment ratio. This would allow employers to stay afloat and use precious resources to hire back individuals laid off during the COVID-19 pandemic rather than experience a significant tax hike.

The bill would not make the Unemployment Compensation Trust Fund insolvent because it would not shift the burden of replenishing the fund from employers to the state but merely extend the time frame in which employers replenished the fund. It would not create a tax break or exemption. It simply would smooth out the payment of the unemployment insurance tax by employers and enable them to hire new staff instead of meeting a substantially larger tax burden. The state should keep its promise to all businesses that there would be no chargeback to any Texas employers for claims filed due to COVID-19 and apply the disaster exemption to the replenishment ratio formula uniformly.

The bill is narrowly targeted to protect businesses and by extension their current or prospective employees from experiencing a rapid and significant tax hike at a time when the economy is still recovering from the effects of the pandemic. Debate about raising the floor or ceiling requirements for the trust fund balance would be a different discussion not relevant to the bill.

CRITICS SAY:

CSHB 7 could jeopardize the solvency of the Unemployment Compensation Trust Fund with a $5.4 billion shortfall that could take years to shore up. The state could ensure a resilient unemployment fund while providing relief to the most vulnerable employers by targeting the replenishment rate change specifically at small businesses and expanding the floor and ceiling requirements for the trust fund balance.

Reducing the tax rate on all employers, including those able to bear an increased tax burden, would prolong the replenishment of the trust fund. In order to protect the solvency of the trust fund while providing relief to the most vulnerable employers, the bill should be specifically targeted at small businesses, as determined by revenue. Rather than creating an across-the-board exception for the replenishment ratio formula, the bill should increase the floor and ceiling requirements for the trust fund balance. This would ensure that the fund was sufficiently financed for the next recession or economic crisis, while reducing the likelihood of increasing business taxes in the future.

NOTES: According to the Legislative Budget Board, the bill would not have a significant fiscal implication to the state, but the Unemployment Trust Fund Account, held outside of the state treasury, would incur an estimated deficit of about $5.4 billion for tax years 2021 and 2022.