SUBJECT: Repealing and adjusting certain unemployment taxes

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 8 ayes — J. Davis, Vo, Bell, Isaac, Murphy, Perez, E. Rodriguez, Workman

0 nays

1 absent — Y. Davis

WITNESSES: For — (*Registered, but did not testify*: Kathy Barber, National Federation of Independent Business - Texas; Brent Connett, Texas Conservative Coalition; Cathy Dewitt, Texas Association of Business; James LeBas, Texas Oil and Gas Association)

Against — None

On — Randy Townsend, Texas Workforce Commission

BACKGROUND: The Texas Workforce Commission (TWC) has several interrelated funds related to worker skill development. These funds include the Employment and Training Investment Assessment (ETIA) holding fund, the training stabilization fund, which has never been funded, and the skills development fund.

Labor Code, ch. 204, subch. G establishes the ETIA, which is one of the four components of the unemployment tax assessed to employers. Funds from the ETIA are held in the ETIA holding fund and are eventually transferred to skills development fund, unless the unemployment compensation fund is below its legally required financial floor.

Sec. 204.123(b) requires TWC to transfer from the ETIA holding fund to the compensation fund "as much of the amount in the holding fund as is necessary to raise the amount in the compensation fund to 100 percent of its floor, up to and including the entire amount in the holding fund." Since 2009, all funds from the ETIA holding fund have been transferred to the unemployment compensation fund, leaving no funds available for transfer to the skills development fund.

Since fiscal 2010, the Legislature has funded TWC's skills development program out of general revenue. Both the House and Senate versions of the fiscal 2014-15 general appropriations act would continue this practice, recommending funding for skills development for fiscal 2014-15 of about $48.9 million in general revenue.

DIGEST: HB 939 would:

- abolish the ETIA and eliminate the ETIA holding fund and the training stabilization fund;
- strike language that allows the skills development fund to be funded from transfers from the ETIA holding fund;
- disburse the unexpended balances of the ETIA holding fund and the training stabilization fund; and
- adjust the employer's initial unemployment insurance contribution rate and replenishment tax rate.

Abolish ETIA holding fund and disburse fiscal 2014-15 beginning balance. The bill would require that up to 15 percent of the ETIA holding fund and the training stabilization fund balances be allocated to workforce development or the administration of the Texas Unemployment Compensation Act. The remaining funds, at least 85 percent of the fund balances, would be credited against the amounts owed by an employers' unemployment insurance contribution in proportion to the amount of the employment and training investment assessment paid by those employers.

Adjustments to initial contribution rate and replenishment tax rate. Effective January 1, 2014, HB 939 would:

- modify the calculation of an employer's initial contribution rate by striking language providing a reduction of one-tenth of 1 percent from the rate established for a major employer group, and increasing the maximum amount paid from 2.6 percent to 2.7 percent; and
- eliminate the 0.1 percent reduction to the replenishment tax rate provided in Labor Code, sec. 204.062.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 939 would result in the return at least $77.5 million to Texas employers in a one-time disbursement to wind down the ETIA holding fund. According to the Legislative Budget Board (LBB), the fiscal 2014-15 beginning balance of the ETIA holding fund is $91.2 million. HB 939 would ensure that at least 85 percent ($77.5 million) of those funds were returned to Texas businesses.

Texas businesses would put those funds to immediate economic use. There is no reason that the state should be maintaining such large cash balances when the funds, in the hands of the private sector, promote the state's economic growth.

While opponents of HB 939 may argue that ETIA funds should be used to shore up the unemployment compensation fund, the compensation fund is not at risk. Texas employers pay the fund's cost, and they would rather have a tax credit now. If there is a need to enhance the balance of the unemployment compensation fund in the future, employers are willing to face a tax increase at that time.

HB 939 would increase transparency within the unemployment compensation tax system by abolishing the ETIA as part of a larger effort to increase truth in budgeting. The ETIA has not been used for its primary purpose — workforce skills development — since 2009. Eliminating the ETIA would reduce from four components to three the number of items an employer saw on an unemployment tax bill. All three remaining assessments are directly related to the unemployment compensation fund and debt obligations associated with that fund.

To make up for the loss of ETIA revenue, HB 939 would adjust both the replenishment tax rate and the new employer's tax rate so that the amount collected by those taxes would be roughly the amount that would have been collected by the ETIA, or about $84.4 million per year.

Texas employers should not be penalized for the way the state does its accounting. The distribution to the employers of the ETIA holding account balance is not the reason for the bill's cost; it is because the ETIA holding account is a general revenue dedicated account, which the comptroller uses for certification. Those funds are transferred every September into the unemployment trust fund, which is not subject to certification. After the beginning balance of the fiscal 2014-15 ETIA holding fund was disbursed and the ETIA and affiliated funds were abolished, the bill would become revenue neutral, with tax adjustments making up for the abolishment of the ETIA flowing directly into the unemployment trust fund.

OPPONENTS SAY:

The one-time disbursement of $77.5 million to Texas employers would be ill-advised during a time in which Texas is still experiencing high unemployment and TWC must repay bonds issued to cover unemployment compensation claims during the worst of the recession. While it might make sense to abolish the ETIA and replace the assessment with adjustments to other taxes to increase transparency, disbursing the beginning fiscal 2014-15 ETIA fund balance to employers would not be the best use of the funds. Rather, these funds should be spent paying off debt and shoring up the unemployment compensation fund. Doing so would help ensure that Texas employers were not hit with higher-than-expected unemployment compensation tax bills during the next economic downturn.

According to the LBB’s fiscal note, HB 939 would remove about $260 million from the funds available to the comptroller to certify the budget. This could reduce the amount of funding available for appropriation to fund vital state priorities, including water infrastructure, transportation, education, and health and human services.

NOTES:

According to the fiscal note, HB 939 would make unavailable for fiscal 2014-15 budget certification purposes about $260 million, comprising the fiscal 2014-15 beginning balance of $91.2 million in the ETIA holding account (general revenue account 5128) and the $84.4 million per year that no longer would be collected.