Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 394 of the 131st G.A.
Date: November 23, 2015

Status: As Introduced
Sponsor: Rep. Sears

Local Impact Statement Procedure Required: No

Contents: To make changes to Ohio's Unemployment Compensation Law

State Fiscal Highlights

- The bill would in total reduce employer unemployment tax contributions to the Unemployment Compensation Fund by an estimated average of $313 million annually from 2018 to 2025.
- The bill would in total reduce unemployment benefit payments from the Unemployment Compensation Fund by an estimated average of $475 million annually from 2018 to 2025.
- The bill would reduce unemployment benefit payments reimbursed by the state.

Local Fiscal Highlights

- The bill would reduce unemployment benefit payments reimbursed by political subdivisions.

Detailed Fiscal Analysis

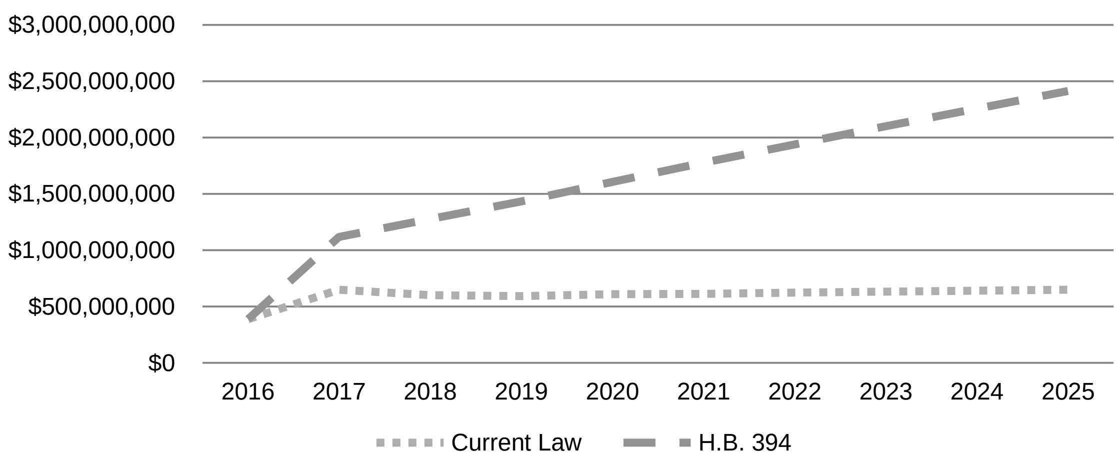
Summary

The bill would alter a number of factors that impact the solvency of the Unemployment Compensation Program, namely:

- Base the minimum safe level (MSL) on 1.0 average high cost multiple (AHCM);
- Increase the taxable wage base;
- Eliminate dependency classes;
- Freeze maximum weekly benefit amount (MWBA); and
- Limit unemployment benefits to 12 to 20 weeks (reduced from a maximum of 26 weeks).

Fiscal data and projections were provided by the Ohio Department of Job and Family Services (ODJFS), which administers the Unemployment Compensation Fund (the Fund). The data are contingent on a number of assumptions about the Fund and overall economy, including: an average season adjusted unemployment rate of approximately 5.5%, average insured unemployment rate of 1.2% to 1.4%, average duration of benefits for the status quo of 15 to 15.5 weeks, average employer tax rate of 2.49% for the status quo, 71,000 to 73,000 weekly claims, and an average number of covered employees ranging from 5.1 million in 2016 and growing to 5.4 million by 2025. The data assume no recession will occur during the ten-year period of the projections. Chart 1 below shows the projected Fund balance under current law versus under the bill.

Chart 1. Projected Unemployment Compensation Fund Balance
Current Law vs. H.B. 394



Under current law, ODJFS projects the Fund's balance will be approximately $388 million (which includes $271 million worth of debt owed to the federal government) by the end of 2016. Continuing the status quo, the balance is projected to grow to $647 million by 2025.

In total, if the bill's proposed changes are implemented on January 1, 2018, the balance of the Fund is projected to grow to an estimated $2.4 billion by 2025. By 2025, the bill would reduce employer contributions by a total of $2.5 billion (an average of $313 million annually), but would also reduce benefits by a total of $4.3 billion (an average of $475 million annually), resulting in a net gain to the Fund. The projections in this fiscal analysis pertain to contributing employers. Ohio's unemployment compensation system consists of two types of employers: contributory employers, who are mostly private sector employers who pay contributions into the Fund, and reimbursing employers, who are mostly public sector employers and certain nonprofits who reimburse the Fund when benefits are paid. The state and local government entities, including counties, municipalities, townships, and school districts, are not included in ODJFS's projection because they are reimbursing employers. However, the provisions in the bill will still impact these entities by requiring them to pay less in unemployment benefits to claimants who qualify.

The sections below will explain the fiscal impacts of the changes included in the bill at a more detailed level.

Background

Ohio's Unemployment Program is funded by two taxes at the federal and state level. The Federal Unemployment Tax Act (FUTA) applies a 6% tax to the first $7,000 in wages paid to covered employees in order to pay for administration costs. If a state's program has good credit, 5.4% of that tax is offset leaving a 0.6% tax for employers. Following the recession in 2008, the Fund was insolvent due, in part, to the sharp rise in claims, requiring the state to borrow nearly $3 billion from the federal government for the program. At the end of FY 2015, the state owed a debt of nearly $800 million. Ohio is on track to repay the debt by the end of calendar year 2016; the bill will not impact this timeline. Due to this debt, the borrowing balance with the federal government causes a 0.3% offset reduction annually after the first two years, meaning that employers are currently paying 1.5% for FUTA (additional reductions may occur if conditions specified in federal law are not satisfied).

The State Unemployment Tax Act (SUTA) applies a varying tax to the first $9,000 in wages paid to covered employees in order to finance unemployment benefits. The tax rate varies both based on the experience rate of employers as well as changes to the MSL. Information regarding the range of SUTA rates can be found in Table 1 below.

Table 1. State Unemployment Tax Act (SUTA) Rates, by Fiscal Year			
	2014	**2015**	**2016**
Lowest Experience Rate	0.3%	0.3%	0.3%
Highest Experience Rate	8.5%	8.6%	8.7%
New Employer Rate (excludes construction)	2.7%	2.7%	2.7%
Construction Industry Rate	7.2%	6.5%	6.4%

Minimum safe level

The MSL is the lowest level of moneys available in the Fund that would allow it to remain solvent during a moderate recession. Currently, the MSL is equal to two standard deviations above the average of the adjusted annual average unemployment compensation benefit paid from 1970 to the most recent calendar year.

The bill changes how the MSL is calculated, to be equal to the average high cost multiple (AHCM). The AHCM is calculated as follows:

$$\text{AHCM} = \frac{\text{Reserve ratio}}{\text{Average high cost rate}}$$

The reserve ratio is calculated by dividing the Fund balance as of December 31 by the total remuneration paid to workers in all employment for the most recent 12 months. The average high cost rate is the average of the three highest calendar year benefit cost ratios in the longer of the last 20 years or the period including the last three completed national recessions (for Ohio, 1991, 2009, and 2010). The AHCM provides an estimate of the length of time (in years) the Fund could pay out benefits in the event of a recession. For example, if a state's AHCM is 1.0, it means that the state has enough money to disburse unemployment benefits for one year in the event of a moderate recession (without factoring in future revenue). A projection of the MSL under current law and with the change made in the bill is detailed in Table 2 below.

Table 2. Projected Minimum Safe Level, by Fiscal Year		
Year	**Current Law**	**H.B. 394 (1.0 AHCM)**
2016	$2,873,926,981	$2,711,386,474
2017	$2,697,367,170	$2,821,811,340
2018	$2,621,851,824	$2,934,758,821
2019	$2,441,241,315	$3,046,104,367
2020	$2,509,917,650	$3,159,084,549
2021	$2,638,926,899	$3,270,046,165
2022	$2,505,959,114	$3,385,111,382
2023	$2,418,672,478	$3,503,539,636
2024	$2,350,771,119	$3,622,294,118
2025	$2,294,585,556	$3,741,085,232

Many of the fiscal provisions of this bill remain in effect until the MSL (1.0 AHCM) is reached, which is projected to happen at a point beyond 2025.

Employer contributions

The bill would expand the taxable wage base, which affects employer contributions. However, the bill also reduces benefit payments, which has the effect of reducing the rate at which employers are taxed. Contribution rates are calculated based on the balance of an employer's account as a percentage of the employer's average annual payroll; by reducing benefits paid, employers will likely have more funds in their account which would reduce an employer's contribution rate. As seen in Chart 2 and Table 3 below, from implementation until 2025, the bill is projected to reduce contributions by a total of $2.5 billion (an average of $313 million annually).

Chart 2. Projected Total Employer Contributions
Current Law vs. H.B. 394

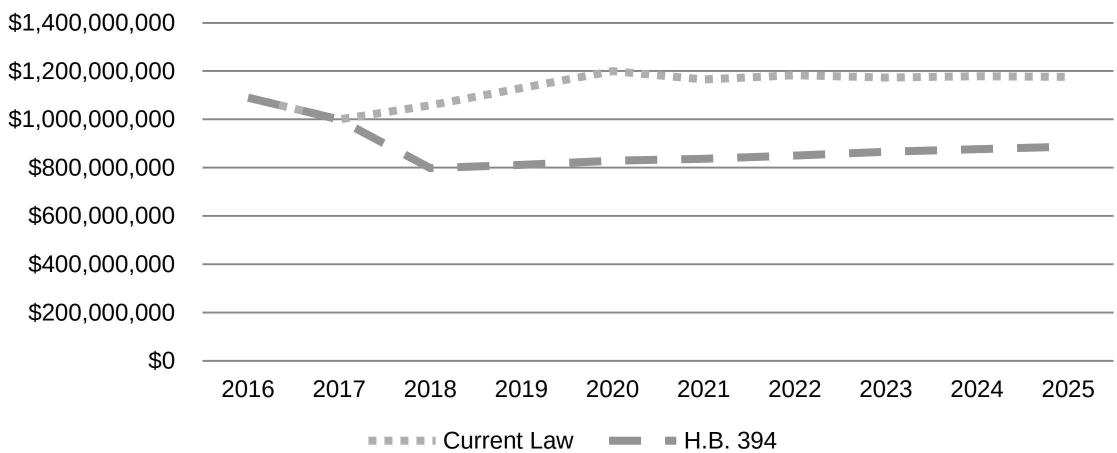


Table 3. Projected Total Employer Contributions, by Fiscal Year		
Year	**Current Law**	**H.B. 394**
2016	$1,089,474,998	$1,089,474,998
2017	$999,891,721	$999,891,721
2018	$1,057,819,350	$798,521,425
2019	$1,129,540,904	$812,201,644
2020	$1,200,271,902	$828,201,787
2021	$1,164,906,403	$837,243,694
2022	$1,182,589,153	$849,883,673
2023	$1,173,747,778	$865,882,558
2024	$1,178,168,466	$875,924,208
2025	$1,175,958,122	$887,535,845

Taxable wage base

The bill will increase the SUTA taxable wage base from $9,000 to $11,000 on January 1 of any year following a contribution date (July 1) in which the Fund is 50% or more below the MSL. The taxable wage remains at $11,000 until January 1 following a computation date in which the Fund is at or above the MSL. This provision will take effect on June 30, 2017, and will likely result in the increase in SUTA taxable wage base on January 1, 2018. As explained above, even with an expanded wage base, a drop in projected unemployment benefit payments would reduce the rate at which employers are taxed, reducing total contributions to the Fund.

Employer rates

Under the bill, if the Director of ODJFS determines the Fund is at or above the MSL, the SUTA taxable wage base will be reduced from $11,000 to $9,000. Additionally, the new employer rate for nonconstruction employers will decrease from 2.7% to 1.0%. Based on the projections, it is assumed these reductions would not take effect until sometime after 2025.

Benefit eligibility

The bill changes conditions that a claimant must meet in order to qualify for unemployment benefits. These changes include requiring remuneration at certain times in a claimant's base period, requiring drug tests in certain circumstances, creating exceptions that prevent locked-out employees and those receiving other forms of benefits from also getting unemployment benefits, revising the definition of just cause terminations, and establishing rules regarding locality of employment. Generally, these provisions are designed to reduce the number of claimants eligible for new or continuing benefits. However, the fiscal effect of these changes is largely unknown because ODJFS does not collect data that would explain the degree of the impact.

Remuneration in base period

Under continuing law, the base period for a claimant generally is defined as the first four of the last five completed calendar quarters. The bill requires a claimant to earn wages in at least three of the calendar quarters in the claimant's base period. This provision will likely reduce the number of claimants who are eligible for unemployment benefits, but the total fiscal effect is unclear.

Drug testing

The bill requires a claimant to pass a drug test in order to receive unemployment benefits if the Director of ODJFS has reasonable cause to suspect the claimant is using a controlled substance illegally and either of the following applies:

- The claimant was discharged from employment with the claimant's most recent employer because of the unlawful use of a controlled substance. (The bill requires claimants to disclose this information.)

- The claimant can only find suitable work in an occupation that the United States Department of Labor (DOL) has determined, by final rule, is an occupation that regularly conducts drug testing.

Considering the first condition, claimants losing their job by failing or refusing a drug test are ineligible for unemployment benefits under continuing law. During FY 2015, 1,036 claimants were denied unemployment benefits for failing a drug test and 265 were denied for refusing to submit to a drug test required by their employer. For the second condition, DOL has not issued a final rule to identify occupations that regularly conduct drug testing. As a result, this provision requiring drug testing will not have an immediate fiscal effect.

Lockout exception

Generally, unemployment benefits are not paid to claimants who lose their job as the result of a labor dispute. However, under current law, claimants who apply for unemployment benefits due to a lockout or constructive lockout are eligible to receive benefits. The assumption in these cases is that the claimant is willing to work but the employer has chosen not to allow operations. The bill would remove this exception.

Disqualification if receiving certain compensation or benefits

Claimants will be barred from unemployment benefits for a week if the claimant receives most forms of workers' compensation or Social Security disability insurance benefits attributable to that week. However, compensation paid due to a permanent partial disability will not disqualify the claimant.

Disqualifications – just cause

Claimants will be barred from unemployment benefits under the bill if the claimant lost the job due to three consecutive days of no-call/no-show, violating the employer's employee handbook, and being found unsuitable for the position. Because ODJFS does not collect data on claimants who lose their jobs in these circumstances, it is not possible to project a fiscal effect for these provisions.

Locality

The bill will require the Director of ODJFS to establish rules defining "locality" and "reasonable distance" in regards to a claimant's job search. Under current law, a claimant will not forfeit unemployment benefits if a job is found beyond a reasonable distance to travel. Additionally, claimants are required to be actively searching for work in their locality. However, both of these terms are undefined. Not knowing how these terms and the surrounding rules will be established, the fiscal effect of this provision is unknown.

Waiting periods and benefit amounts

In total, the fiscal impact of reducing the number of eligible weeks, freezing maximum benefits, and eliminating dependency classes will significantly reduce the amount of benefits disbursed. As seen in Chart 3 and Table 4 below, from implementation until 2025, the bill will reduce benefit payments by a total of $4.3 billion (an average of $475 million annually).

Chart 3. Projected Total Benefits
Current Law vs. H.B. 394

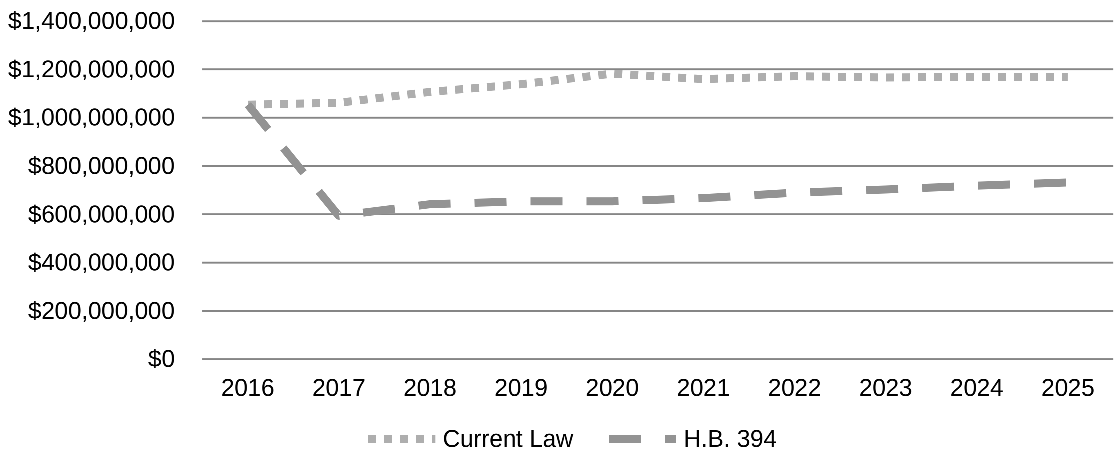


Table 4. Projected Total Benefits, by Fiscal Year		
Year	**Current Law**	**H.B. 394**
2016	$1,054,036,272	$1,054,593,592
2017	$1,062,164,649	$594,786,080
2018	$1,107,750,934	$641,613,739
2019	$1,138,306,109	$654,423,236
2020	$1,183,221,230	$654,239,110
2021	$1,160,763,669	$666,730,384
2022	$1,171,992,449	$690,109,876
2023	$1,166,378,059	$703,225,149
2024	$1,169,185,254	$718,361,955
2025	$1,167,781,657	$732,742,785

All of the benefits included in this projection are for contributing employers. Under the bill, reimbursing employers, which include municipalities, counties, townships, and school districts, will pay less in benefits to claimants who qualify for unemployment benefits.

Waiting weeks

Claimants will be required to serve an additional waiting week after any week in which the claimant earned wages in excess of the claimant's weekly benefit amount. Currently, a claimant only serves one waiting week per benefit year. It is unclear what fiscal effect this will have on unemployment benefits.

Maximum benefit amounts

The bill will freeze the maximum weekly benefit amount (MWBA) if the Fund is at or below 50% MSL following the effective date of the bill until the MSL is met or exceeded. This freeze will likely take effect on January 1, 2018, keeping the MWBA at a projected $453 until the MSL is reached. Under current law, claimants can have a higher MWBA based on the number of dependents in the household. The bill will remove this provision, capping MWBA at an amount regardless of the number of dependents. ODJFS projects eliminating dependency classes will reduce benefits by 4.5%.[1]

Maximum weeks

Currently, claimants can receive benefits for up to 26 weeks. The bill will reduce the maximum number of weeks of coverage to no more than 12 to 20 weeks based on Ohio's unemployment rate at the time the claimant files the claimant's initial application for unemployment benefits. As of September 2015, ODJFS calculated that Ohio's unemployment rate was 4.5%. Assuming that seasonal unemployment rates vary up to 5.5%, the bill would restrict unemployment benefits to 12 weeks. In comparison, during calendar year 2014, claimants received an average of 16 weeks of benefits.

Social Security retirement offset

Under the bill, unemployment benefits would be offset by any amount a claimant receives in Social Security retirement benefits. While this provision would reduce the amount of benefits, it is not possible to estimate the fiscal impact because ODJFS does not collect information regarding the Social Security retirement benefits of claimants.

Overpayments

Overpayments due to fraudulent misrepresentation

For overpayments from fraudulent misrepresentation, current law allows the Director of ODJFS to cancel a claimant's entire fraudulent weekly claim or the entire right to unemployment benefits within four calendar years following the end of the calendar year in which the fraud took place. Also, the claimant will be ineligible for two otherwise valid weeks of benefits for each weekly claim canceled due to fraud for the following six calendar years. The bill allows the Director to cancel fraudulent claims regardless of how much time has passed. Additionally, no time limit would be placed on how long a claimant can be required to forfeit two valid weeks for each fraudulent claim.

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[1] In September 2014, ODJFS pulled a sample of 15,000 claimants and determined there would be an estimated 4.27% reduction in benefit payments by eliminating dependent rates. Similarly, Dr. Wayne Vroman of the Urban Institute sampled 15,000 claimants in 2010 and estimated a 4.7% savings. Averaging the two results in a savings of 4.5%

Overpayments not due to fraudulent misrepresentation

For overpayments not due to fraudulent misrepresentation, current law allows the Director of ODJFS to cancel benefits for three calendar years following the end of the calendar year in which the overpayment took place. Additionally, the Director must recover repayment within three years from ordering repayment. The bill extends the time limit for the Director to cancel benefits from three years to six years and gives the Director discretion to create rules that specify the time frame the Director can seek repayment.

The bill grants the Director of ODJFS broader discretion in recovering overpayments made to claimants as a result of fraud or errors. In both cases, it is unclear if eliminating these time limits would result in a fiscal effect. While these changes would allow more opportunities to recapture overpayments, it is not clear if current law limitations practically inhibit ODJFS from combatting fraud or errors.

Unemployment Compensation Advisory Council

The bill will eliminate the Unemployment Compensation Advisory Council (UCAC) and require the Director of ODJFS to submit an annual report regarding certain expenditures from the Fund to the House Speaker and Senate President. This group has not met since 2010 and has no members. Because UCAC does not currently have an appropriation, this provision will not have a fiscal effect.

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