

SENATE BILL 65

Introduced by Keating

12/28	Introduced
1/02	Referred to Taxation
1/04	First Reading
1/04	Fiscal Note Requested
1/12	Fiscal Note Received
1/13	Fiscal Note Printed
1/14	Tabled in Committee

1 SENATE BILL NO. 65

2 INTRODUCED BY KEATING

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE
5 UNEMPLOYMENT INSURANCE ADMINISTRATION TAX; AMENDING SECTIONS
6 39-51-201, 39-51-404, 39-51-1121, AND 39-51-3207, MCA; AND
7 PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 39-51-404, MCA, is amended to read:

11 "39-51-404. Administrative expenses. (1) Money credited
12 to the account of this state in the unemployment trust fund
13 by the secretary of the treasury of the United States
14 pursuant to section 903 of the Social Security Act, as
15 amended, may be requisitioned and used for the payment of
16 expenses incurred for the administration of this chapter
17 pursuant to a specific appropriation by the legislature,
18 provided that the expenses are incurred and the money is
19 requisitioned after the enactment of an appropriation law
20 which that:

21 (a) specifies the purposes for which such the money is
22 appropriated and the amounts appropriated ~~therefor~~;

23 (b) limits the period within which such the money may
24 be expended to a period ending not more than 2 years after
25 the date of the enactment of the appropriation law; and

1 (c) limits the amount which that may be used during any
2 12-month period beginning on July 1 and ending on the next
3 June 30 to an amount which that does not exceed the amount
4 by which the aggregate of the amounts credited to the
5 account of this state pursuant to section 903 of the Social
6 Security Act, as amended, during the same 12-month period
7 and the 34 preceding 12-month periods exceeds the aggregate
8 of the amounts used pursuant to this section and charged
9 against the amounts credited to the account of this state
10 during any of such the 35 12-month periods.

11 (2) For the purposes of this section, amounts used
12 during any such 12-month period ~~shall~~ must be charged
13 against equivalent amounts which that were first credited
14 and which that are not already ~~so~~ charged, except that ~~no an~~
15 amount used for administration during ~~any--such~~ a 12-month
16 period may not be charged against ~~any an~~ amount credited
17 during such a 12-month period earlier than the 34th
18 preceding such period. Money requisitioned for the payment
19 of expenses of administration pursuant to this section ~~shall~~
20 must be deposited in the unemployment insurance
21 administration account but, until expended, ~~shall~~ must
22 remain a part of the unemployment insurance fund.

23 (3) The department shall maintain a separate record of
24 the deposit, obligation, expenditure, and return of funds ~~so~~
25 deposited. If any money ~~so~~ deposited is for any reason not

to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating such the money, it ~~shall~~ must be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

~~{4}--Beginning--with--the--third--quarter--of--1983,--an assessment--equal--to--1%--of--all--taxable--wages--provided--for--in 39-51-1108--and--1.05%--of--total--wages--paid--by--employers--not covered--by--an--experience--rating--must--be--levied--against--and paid--by--all--employers--and--may--be--used--by--the--department--for administrative--purposes. All--such--assessments--must--be deposited--in--the--unemployment--insurance--administration account--provided--for--in--39-51-406--and--used--as--appropriated by--the--legislature. Any--assessments--deposited--to--the unemployment--insurance--administration--account,--including investment--income,--that--are--not--appropriated--by--the legislature--must--be--transferred--to--the--unemployment--trust fund--account--provided--for--in--39-51-402--"~~

Section 2. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for

employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period ~~shall--be~~ is that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which such the individual files a valid claim for benefits, except that the benefit year ~~shall~~ must be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may

1 not be established until the expiration of the current
 2 benefit year. However, in the case of a combined-wage claim
 3 pursuant to the arrangement approved by the secretary of
 4 labor of the United States, the base period is the period
 5 applicable under the unemployment law of the paying state.

6 (5) "Board" means the board of labor appeals provided
 7 for in Title 2, chapter 15, part 17.

8 (6) "Calendar quarter" means the period of 3
 9 consecutive calendar months ending on March 31, June 30,
 10 September 30, or December 31.

11 (7) "Contributions" means the money payments to the
 12 state unemployment insurance fund required by this chapter
 13 ~~but does not include assessments under 39-51-404(4).~~

14 (8) "Department" means the department of labor and
 15 industry provided for in Title 2, chapter 15, part 17.

16 (9) "Employing unit" means any individual or
 17 organization, including the state government, any of its
 18 political subdivisions or instrumentalities, any
 19 partnership, association, trust, estate, joint-stock
 20 company, insurance company, or corporation, whether domestic
 21 or foreign, or the receiver, trustee in bankruptcy, trustee
 22 or trustee's successor thereof, or the legal representative
 23 of a deceased person which has or had in its employ one or
 24 more individuals performing services for it within this
 25 state, except as provided under 39-51-204(1)(a) and (1)(b).

1 All individuals performing services within this state for
 2 any employing unit ~~which~~ that maintains two or more separate
 3 establishments within this state are considered to be
 4 employed by a single employing unit for all the purposes of
 5 this chapter. Each individual employed to perform or assist
 6 in performing the work of any agent or employee of an
 7 employing unit is ~~deemed-to-be~~ considered employed by ~~such~~
 8 the employing unit for the purposes of this chapter, whether
 9 ~~such the~~ individual was hired or paid directly by ~~such the~~
 10 employing unit or by ~~such the~~ agent or employee, provided
 11 the employing unit has actual or constructive knowledge of
 12 the work.

13 (10) "Employment office" means a free public employment
 14 office or branch ~~thereof~~ office operated by this state or
 15 maintained as a part of a state-controlled system of public
 16 employment offices or ~~such~~ other free public employment
 17 offices operated and maintained by the United States
 18 government or its instrumentalities as the department may
 19 approve.

20 (11) "Fund" means the unemployment insurance fund
 21 established by this chapter to which all contributions and
 22 payments in lieu of contributions are required to be paid
 23 and from which all benefits provided under this chapter
 24 ~~shall~~ must be paid.

25 (12) "Gross misconduct" means a criminal act, other than

a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which that demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(13) "Hospital" means an institution which that has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his the individual's contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution which that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which that is acceptable for full credit toward such a

degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) ~~Notwithstanding any-of-the-foregoing-provisions--of~~ this subsection (15)(a), all colleges and universities in this state are institutions of higher education for purposes of this part.

(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(17) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter ~~shall~~ must be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash ~~shall~~

1 must be estimated and determined in accordance with rules
2 prescribed by the department.

3 (b) The term "wages" does not include:

4 (i) the amount of any payment made by the employer, if
5 the payment was made under a plan established for the
6 employees in general or for a specific class or classes of
7 employees, to or on behalf of the employee for:

8 (A) retirement;

9 (B) sickness or accident disability under a workers'
10 compensation law;

11 (C) medical and hospitalization expenses in connection
12 with sickness or accident disability; or

13 (D) death;

14 (ii) remuneration paid by any county welfare office from
15 public assistance funds for services performed at the
16 direction and request of such a county welfare office; or

17 (iii) employee expense reimbursements or allowances for
18 meals, lodging, travel, subsistence, or other expenses, as
19 set forth in department rules.

20 (20) "Week" means a period of 7 consecutive calendar
21 days ending at midnight on Saturday.

22 (21) An individual's "weekly benefit amount" means the
23 amount of benefits the individual would be entitled to
24 receive for 1 week of total unemployment."

25 **Section 3.** Section 39-51-1121, MCA, is amended to read:

1 **"39-51-1121. Definitions.** As used in this part and part
2 12, the following definitions apply:

3 (1) "Computation date" means the reporting period
4 ending September 30 preceding the calendar year for which a
5 covered employer's contribution rate is effective.

6 (2) "Cutoff date" means October 31 immediately
7 following the computation date. The department may extend
8 the cutoff date in meritorious cases.

9 (3) "Deficit employer" means an employer who is subject
10 under this chapter and who has established a record of
11 accumulated benefits charged to the employer's account in
12 excess of the employer's accumulated contributions paid as
13 of the cutoff date.

14 (4) "Eligible employer" means an employer who has been
15 subject under this chapter for the 3 fiscal years
16 immediately preceding the computation date and who has:

17 (a) established a record of accumulated contributions
18 in excess of benefits charged to the employer's account; and

19 (b) paid wages in at least 1 of the 8 calendar quarters
20 preceding the computation date.

21 (5) "Fiscal year" means the four consecutive calendar
22 quarters ending on September 30.

23 (6) "Governmental entities" means the state or any
24 political subdivision of the state or an instrumentality of
25 the state or a political subdivision, including any

employing unit funded directly by tax levies.

(7) "New employer" means an employer who:

(a) has not been subject to the provisions of this chapter for the 3 fiscal years immediately preceding the computation date; and

(b) has established a record of accumulated contributions in excess of benefits charged to the employer's account.

(8) "Taxable wage base" means the amount of wages subject to contributions ~~and---to---assessments---under 39-51-404(4)~~ for each calendar year. Payment of contributions ~~and--of--assessments--under--39-51-404(4)~~ may apply only to wages paid up to and including the amount specified in 39-51-1108."

Section 4. Section 39-51-3207, MCA, is amended to read:

"39-51-3207. Authority to determine uncollectibility of debts -- transfer of debts for collection -- liability for payment of fees and costs of collection. (1) After making all reasonable efforts to collect unpaid contributions, ~~assessments--under--39-51-404(4)~~, and penalties and interest thereon on unpaid contributions, or overpaid benefits under 39-51-3206 and interest thereon on overpaid benefits, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the state auditor for collection as

provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the state auditor may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the state auditor. If less than the full amount of the debt is collected, the state auditor shall retain only a proportionate share of the collection fees or costs."

NEW SECTION. **Section 5. Applicability.** [This act] applies to all unemployment insurance tax assessments on or after July 1, 1993.

NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0065, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill would eliminate the unemployment insurance (UI) administrative tax effective July 1, 1993.

ASSUMPTIONS:

1. The projected fund balance in the UI administrative tax account at the beginning of FY94 is approximately \$3.2 million. The balance in the UI administrative tax account may continue to be appropriated by the legislature. Unspent amounts must be transferred to the UI trust fund as provided in 39-51-406, MCA.
2. The executive budget recommends appropriating approximately \$3.4 million and \$3.1 million in FY94 and FY95, respectively from the UI administrative tax account over the biennium to the Department of Labor and Industry. Agency functions funded with UI administrative tax revenues include: job service; unemployment insurance; employment relations division (ERD) administration; standards bureau; legal services; research, safety & training division (RSTD) administration; apprenticeship and training; and research and analysis.
3. The LFA current level includes UI administrative tax funding for three agency functions for which the executive budget recommends funding from the general fund: displaced homemakers, jobs for Montana graduates (JMG), and project work program (PWP). The amount of funding contained in the LFA current level for these three programs is approximately \$430,000 each fiscal year.

FISCAL IMPACT:Revenues:

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
UI Administrative Tax	\$3,472,152	0	(\$3,472,152)	\$3,614,618	0	(\$3,614,618)

(continued)

David Lewis 1-12-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Thomas F. Keating 1/13/93
 THOMAS F. KEATING, PRIMARY SPONSOR DATE

Fiscal Note for SB0065, as introduced

5B65

FISCAL IMPACT: (continued)

Expenditures:

To the extent that the balance in the UI administrative tax account is appropriated, elimination of the UI administrative tax revenue would require some combination of program reductions and fund switches equivalent to \$3.3 million over the biennium, approximately 50% of the budget authority recommended in the executive budget. The following table reflects the amount of funding currently recommended by the executive budget for each of the agency functions funded with UI administrative tax revenue and the percentage of the total funding comprised of UI administrative tax revenues.

Agency Function	FY '94			FY '95		
	Total Funds	UI Admin Tax	Percentage	Total Funds	UI Admin Tax	Percentage
Job Service	13,841,344	2,123,558	15.3%	13,815,876	1,859,034	13.5%
Unemployment Insurance	4,567,627	132,391	2.9%	4,606,732	137,027	3.0%
ERD Administration	603,804	195,396	32.3%	600,499	192,867	32.2%
Standards ¹	757,565	384,344	50.7%	754,604	384,033	50.9%
Legal Services	1,037,781	281,912	27.2%	1,041,376	277,175	26.6%
RSTD Administration	119,930	15,537	12.9%	119,609	15,381	12.9%
Apprenticeship & Training	680,478	194,562	28.6%	682,811	194,369	28.4%
Research and Analysis	<u>1,235,620</u>	<u>35,762</u>	<u>2.9%</u>	<u>1,230,227</u>	<u>34,602</u>	<u>2.8%</u>
Total ²	22,844,149	3,363,462	14.7%	21,621,507	3,094,488	14.3%

¹ Excluding administration of silicosis benefits, subsequent injury fund, and uninsured employers fund.

² Total applicable only to agency functions funded with UI administrative tax revenues in the executive budget.

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