House Bill 3389: UI Tax Rate Relief for Pandemic-Impacted Businesses

Background

The goal of HB 3389 is to reduce the Unemployment Insurance (UI) tax impact on businesses most impacted by the pandemic while ensuring that the UI Trust Fund remains solvent in the long-term.

Regular UI benefits are paid out of the UI Trust Fund and are funded by employers subject to Oregon's unemployment laws; workers do not contribute to this fund. Private employers pay taxes into the UI Trust Fund. Governments and non-profits are either required to reimburse the UI Trust Fund dollar-for-dollar for UI benefits paid or in some cases can choose whether to fund benefits by paying the UI tax or by reimbursing the Trust Fund.

Oregon's self-balancing statutory formula for establishing the annual UI tax rate schedule is tied to a number of factors such as the size of Oregon's total taxable payroll, and is focused on keeping the UI Trust Fund solvent. The formula is designed to finance benefits over a period of business cycles while remaining solvent and forgoing taxing employers at the highest rate until the economy has started to recover. Due to the self-balancing formula, Oregon was one of the few states that maintained a solvent UI Trust Fund during the Great Recession, and is projected to remain solvent during the COVID-19 pandemic recession.

There are eight UI tax schedules set in statute, with higher schedule numbers representing overall higher UI tax rates. Each September, the Employment Department computes which tax schedule will go into effect for the following calendar year, and mails notices to employers in November to inform them of their UI tax rate for the upcoming calendar year.

An individual employer's UI tax rate depends on two key factors: 1) the UI tax schedule Oregon is in (as described above); and 2) the employer's experience rating (the ratio of benefits attributed, or 'charged,' on the employer to its overall taxable payroll). This experience rating approach is federally required. Oregon caps the UI tax rate at 5.4%, the lowest permissible rate that can satisfy federal requirements. The worst situation for employers is if the UI Trust Fund becomes insolvent. That will result in increased employer state UI taxes over time and can significantly increase their Federal Unemployment Tax Act (FUTA) payroll tax obligations. This is why a balanced approach to fund changes is necessary – given our unusual circumstance, best estimates can assist policymakers but are only that, estimates based off a series of assumptions. As of March 26, 2021, 20 states have borrowed over $53.6 billion to pay regular UI benefits. Employers in those states will have to pay taxes not just to fund future benefits, but also to repay that borrowed money along with interest, and many will also face increased FUTA taxes.

The FUTA tax rate is 6 percent on the first $7,000 of an employee's wages. Employers can generally take a credit against their FUTA taxes for state UI taxes paid as long as UI laws meet federal requirements. The maximum allowable credit is 5.4 percent, resulting in a net payable FUTA tax rate of 0.6 percent on the first $7,000 for each employee. These funds are collected by the Internal Revenue Service (IRS) to help fund workforce programs across the nation.

Key Provisions of HB 3389

- Extend the 'look back period' used to determine solvency level from 10 years to 20 years. This will enhance long-term UI Trust Fund stability by taking a broader range of economic situations into account.
- Omit 2020 and 2021 from being considered a 'high cost' benefit period. This avoids using the highest COVID-19 pandemic years when setting the solvency level for the future.
- Use employers' experience ratings that were used to determine 2020 UI tax rates when determining rates for 2022, 2023, and 2024. Effectively, this disregards the impact of the pandemic when determining each employer's experience rating so those businesses that had to close for public health reasons do not also see their experience rating greatly increase as a result of measures taken to protect public health.
- Reduce fund adequacy targets by about 10% overall. After modeling, this is the maximum reduction in the overall amount of taxes collected that OED would suggest at this time to avoid unintended consequences for employers.
- Codify in statute current OED policy that allows employers who meet certain criteria to defer up to one-third of the taxes due for calendar year 2021 until June 30, 2022 without accruing interest or penalties on the deferred amounts.[1]
- Employers are eligible for forgiveness of their deferred 2021 UI taxes based on the amount their UI tax rates increased from 2020 to 2021
  - Increase of more than 2% get 100% forgiveness of deferred UI taxes
  - Increase of more than 1.5% to 2% get 75% of their deferred UI taxes forgiven
  - Increase of more than 1% to 1.5% get 50% of their deferred UI taxes forgiven
  - The total projected cost of this forgiveness is estimated at $84 million.

These changes take advantage of Oregon's solvent UI Trust Fund, and use some of the existing reserves to provide short and long-term relief to Oregon businesses. They provide a mix of short-term and long-term tax relief for businesses, while protecting them against long term risks of the Trust Fund becoming insolvent to the extent we can predict. Businesses most impacted by the pandemic – like restaurants, barbershops and others that saw big increases in their experience ratings, will see the most relief.

These changes together for 2021 through 2029, are projected to save employers $2.4 billion.

	UI tax schedule forecast by year (lower schedules have lower taxes)									
	2021	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**
No interventions	4	5	8	6	5	5	4	3	2	1
Under HB 3389	4	5	6	4	3	3	3	2	2	1

These are long term projections, depending on many interrelated variables in a very volatile economic environment so inherently have increased margins of error.

[1] Amounts deferred may impact some employers FUTA tax credits for the deferment period