

# HOUSE BILL REPORT

## HB 2510

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**As Reported by House Committee On:**  
Commerce & Labor

**Title:** An act relating to tax delinquency assessments for successor employers.

**Brief Description:** Modifying provisions concerning unemployment compensation.

**Sponsors:** Representatives Conway, McCoy, Condotta, McMorris and Chase; by request of Employment Security Department.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 1/22/04, 2/2/04 [DPS].

**Brief Summary of Substitute Bill**

- Changes the unemployment insurance contribution rate to the highest applicable rate, plus 2 percent, for a calendar year for businesses found to be evading the successor employer requirements.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Assistant Ranking Minority Member; Crouse, Holmquist, Hudgins, Kenney and McCoy.

**Staff:** Chris Cordes (786-7103).

**Background:**

Washington's unemployment insurance system requires each covered employer to pay contributions on a percentage of his or her taxable payroll, except for certain employers who reimburse the Employment Security Department (ESD) for benefits the agency pays to these employers' former workers. For most covered employers, unemployment insurance contribution rates are determined by the rate in the employer's assigned rate class under the unemployment insurance tax schedule in effect for that calendar year (or, beginning in 2005, the combined rate assigned to the employer based on layoff experience, social costs, and solvency surcharge, if any). The highest contribution rate in 2004 is 5.4 percent. Beginning in 2005, the highest rate will vary but may not exceed 6.5 percent plus a solvency surcharge, if any.

Some covered employers are not qualified to be assigned a rate class. These unqualified employers include employers who are delinquent in paying contributions and certain successor employers who were not employers at the time of acquiring a business. Delinquent employers pay at a contribution rate of 5.6 percent or, beginning in 2005, two-tenths higher than the highest rate. Until a new successor employer becomes a qualified employer, the rate for these successor employers is the lower of the rate class assigned to the predecessor employer (or, beginning in 2005, the assigned rate) or the average industry rate with a 1 percent minimum rate.

For a business transfer on or after January 1, 2005, a new successor employer who has substantial continuity of ownership and management of the predecessor's business is not permitted to use the optional average industry rate, but must pay at the rate assigned to the predecessor employer, and will have the experience of the predecessor employer transferred to the successor as part of its array calculation factor rate beginning in January following the transfer.

In 2003, a penalty was enacted that applies to an employer who is delinquent in paying unemployment taxes because of an intent to evade the successorship requirements and to businesses that are promoting such evasion. For five calendar quarters, these businesses will be assigned the highest contribution rate.

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**Summary of Substitute Bill:**

The penalty is changed for businesses that are delinquent in paying unemployment contributions because of an intent to evade the successorship requirements and for businesses that are promoting such evasion. Instead of being assigned the highest contribution rate for five quarters, these businesses will be assigned a rate that is the highest contribution rate, plus 2 percent, for the calendar year in which the Commissioner of the ESD makes the penalty determination.

**Substitute Bill Compared to Original Bill:**

The substitute bill: (1) changes the penalty contribution rate for businesses evading the successorship provisions to a rate that is the highest applicable rate plus 2 percent for a calendar year; (2) clarifies that the penalty rate includes the solvency surcharge rate, if any; and (3) clarifies that the penalty rate applies to the year in which the Commissioner makes the penalty determination.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** The Department's tax system is set up to provide a rate for a calendar year. It is difficult to have a rate that runs over five quarters. This bill sets a rate that is equivalent to the maximum rate, but applies that rate over four quarters instead of five. The issue of penalizing those who evade the successor employer requirements is something all the stakeholders agree on. There was a suggestion that the penalty rate not be fixed at 8.1 percent, but instead should float at a specified amount above the highest rate.

**Testimony Against:** None.

**Persons Testifying:** Mary Clogston, Employment Security Department; Tom Dooley, Association of Washington Business; and Ed Trezenberg, Carpenters Union.

**Persons Signed In To Testify But Not Testifying:** None.