

# HOUSE BILL REPORT

## SHB 2491

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### As Passed Legislature

**Title:** An act relating to specifying when predecessor-successor relationships do not exist for purposes of unemployment experience rating.

**Brief Description:** Addressing when predecessor-successor relationships do not exist for purposes of unemployment experience rating.

**Sponsors:** House Committee on Labor & Workforce Development (originally sponsored by Representatives Upthegrove and Orwall).

#### **Brief History:**

##### **Committee Activity:**

Labor & Workforce Development: 1/25/12, 1/30/12 [DPS].

##### **Floor Activity:**

Passed House: 2/9/12, 97-0.

Passed House: 4/6/12, 94-0.

Passed Senate: 4/10/12, 40-0.

Passed Legislature.

#### **Brief Summary of Substitute Bill**

- Specifies particular circumstances in which a predecessor-successor relationship does not exist, and therefore, successor unemployment contribution rates are not assigned to an employer.

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### HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Sells, Chair; Reykdal, Vice Chair; Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan, Green, Kenney, Miloscia, Moeller, Ormsby, Roberts and Warnick.

**Minority Report:** Do not pass. Signed by 1 member: Representative Taylor.

**Staff:** Jill Reinmuth (786-7134).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

Most employment in the state is covered for unemployment insurance. Each covered employer is required to pay contributions on a percentage of his or her taxable payroll, except for certain employers who reimburse the Employment Security Department for benefits the agency pays to these employers' former workers.

For most covered taxable employers, unemployment insurance contribution rates are determined by the combined rate assigned to the employer based on layoff experience, social costs, and the solvency surcharge, if any. For successor employers, however, contribution rates are assigned differently.

### Predecessor-Successor Relationships.

A predecessor-successor relationship exists when a transfer occurs and one business acquires all or part of another business. It may arise from the transfer of operating assets, which may include the transfer of employees, or from an internal reorganization of affiliated companies.

Whether or not a predecessor-successor relationship exists depends on the totality of the circumstances. Factors that favor establishment of such a relationship include, but are not limited to: whether the employers are in the same or a like business; whether the assets were transferred directly; whether multiple types of assets were transferred; whether a significant number or group of employees were transferred; whether the business name continued or was used in some way; whether there was continuity of management; and whether the employers shared one or more owners.

The Employment Security Department must prove by a preponderance of the evidence that a business is the successor, or partial successor, to a predecessor business.

### Successor Contribution Rates.

Contribution rates assigned to successor employers vary depending on whether the successor is an employer and other circumstances.

If the successor is an employer at the time of the business transfer, the successor's tax rate is unchanged for the rest of the calendar year. Beginning on January 1 after the transfer (and until the successor qualifies for its own rate), the rate is based on a combination of the successor's and the predecessor's experience.

If the successor is not an employer at the time of the business transfer, the successor's tax rate is the same as the predecessor's tax rate for the rest of the calendar year. Beginning on January 1 after the transfer (and until the successor qualifies for its own rate), the rate depends on whether there is substantial continuity of ownership, control, or management by the successor.

Other provisions address rates assigned to successor employers that simultaneously acquire business from multiple employers with different tax rates, predecessor employers, and

employers engaged in "State Unemployment Tax Avoidance" (also referred to as "SUTA dumping").

**Summary of Substitute Bill:**

A predecessor-successor relationship does not exist, and successor contribution rates are not assigned, when a significant purpose of the transfer of the business or its operating assets is for: (1) the employer to move or expand an existing business; or (2) an employer to establish a substantially similar business under common ownership, management, and control.

If an employer transfers its business to another employer, and both employers are at the time of transfer under substantially common ownership, management, or control, the experience is also transferred.

If a significant purpose of the transfer is to obtain a reduced experience rate, rates are computed and penalties and sanctions applied as specified in the statute on "State Unemployment Tax Avoidance."

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The law defines "successor" to keep people from gaming the unemployment system. Any reasonable person would not have viewed a particular business owner who expanded his restaurant as a successor. Under the law, however, he was found to be a successor. Because of that, there were dramatic and significant increases in unemployment costs. There has been some work on some clarifying language to make sure the law captures those relationships when someone is really trying to game the system, and not those who are trying to do the right thing.

The tax rate for the new restaurant went up because we were considered a successor. The new rate was more than five times the initial rate, and more than \$250,000 over the industry average over a five-year period. At least some of that expense could have meant some jobs. Restaurant profit margins are extraordinarily slim, and prices cannot be increased. Simply because there was a restaurant in the space before the new restaurant came along, we were punished. We were trying to do the right thing and hired people during the downturn.

(With concerns) The bill raises a conformity issue, which could result in the loss of additional employer tax credits of \$200 million to \$300 million per year, and administrative funding of \$100 million per year. There is ongoing work to address this issue. The retroactivity clause generates about \$2 million in administrative costs back and recalculate tax rates. These costs could be avoided. The bill does not give a tax break for all successors. Some would have higher rates, and others would have lower rates.

(Opposed) None.

**Persons Testifying:** (In support) Representative Upthegrove, prime sponsor; and Roger Stilson, Mama Stortini's.

(With concerns) Neil Gorrell, Employment Security Department.

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