VERBATIM TRANSCRIPTION

OF

the

WORKSHOP TO ADDRESS THE IMPACT OF A PROPOSED REGULATION ON SMALL BUSINESSES

held on

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Prepared by

Transcription by Nicole Perry
Aegis Rapidtext

DETR – Workshop to Address the Impact of a Proposed Regulation on Small Businesses
October 24, 2011 Meeting
Verbatim Transcript

Note: *If a portion of the recording could not be transcribed due to the quality of the recording or because the words could not be distinguished, this has been indicated as follows: "(Incomprehensible)".*

KARCH: Good morning. I would like to call this meeting to order. My name is Kelly Karch, and I serve as the Deputy Administrator for Nevada's Employment Security Division. Sitting to my right, I would also like to introduce Tom Susich, Senior Legal Counsel for the Employment Security Division. This small business workshop is being conducted in compliance with Nevada revised statutes, Section 233b.0608, to solicit public comment on a proposed amendment to the regulation, setting the unemployment insurance tax scheduled for calendar year 2012, and contained in Nevada Administrative Code 612.270. Ms. Bedrosian, for the record, was proper notice of this meeting given in accordance with Nevada revised statute 233b.061?

BEDROSIAN: For the record, Flo Bedrosian. Yes, proper notice was given.

KARCH: Thank you, Ms. Bedrosian. For the record, were any written comments submitted in response to this posting?

BEDROSIAN: Yes. Flo Bedrosian again, for the record.

KARCH: Thank you, Ms. Bedrosian. To begin the meeting, is there anyone in either Las Vegas or Carson City that would like to provide public comment? If so, please make your way to the microphone and identify yourself for the record.

MARTINEZ: For the record, Art Martinez. There are no comments from Las Vegas.

KARCH: Thank you. See none. Let us continue with the small business workshop to address the impact of a proposed regulation on small business. As part of the annual regulatory process, a meeting of the Employment Security Council was held along with a regulation workshop on October 4, 2011. After hearing testimony regarding the status of the unemployment insurance trust fund, the impact of federal borrowing and considering the public comment from one individual, the Employment Security Council voted unanimously to recommend to the Department's administrator to keep the average unemployment insurance tax rate at 2.0 percent for calendar year 2012. For those viewing this meeting on the Internet, the PowerPoint presentations being made today are available on the Department's website at www.nvdetr.org. On the right-hand side of the web page in the quick links section under public meetings, click on today's meeting and you will find the presentations. The first presentation will be a review of the U.I. trust fund. I would now like to introduce our first presenter at today's workshop, David Schmidt. Mr. Schmidt is an economist with the Department's research and analysis bureau.

SCHMIDT: Thank you. Again, for the record, my name is David Schmidt. I'm an economist with the research and analysis bureau of DETR. And I'm here to provide a brief overview of the unemployment insurance trust fund and the numbers that were presented at the Employment Security Council earlier this month. Heading into the current economic downturn and the previous recession, Nevada was well prepared for this recession. The state had an average high-cost multiple of 1.02, which is a federally recommended solvency measure that represents having one-year worth of benefit payments in reserve in the trust fund in advance of the recession. And the state also had a solvency multiple according to state statues, in NRS 612.550, of 1.47, representing almost 50 percent above that recommended solvency level. Nevada, unlike many other states, was able to sustain a significant hit to the trust fund before we actually had to begin borrowing. This chart shows you that Nevada had an unemployment rate of over 13 percent when we actually began borrowing in October of 2009. This is in contrast to many other states, two of which began borrowing with an unemployment rate of less than five percent. Most states had an unemployment rate of between 6 and 11 percent when they began borrowing. In 2009 and 2010 in particular, a strong increase in unemployment benefit payments took the trust fund from having reserves of approximately $800 million at the end of 2007, to the point where we're estimating that by the end of 2011 we will have borrowed about $800 million. In 2009 in particular, unemployment benefit payments from the regular unemployment insurance benefit system, not including any federally-paid extensions, passed over $1 billion in one year alone and fell to about $800 million in 2010. This chart shows you a historical perspective with the average tax rate on the unemployment insurance system. And the tax rate that would have needed to be charged in order to pay for benefits in any given year, going back to 1950. You can see that, traditionally, the tax rate doesn't quite increase quite as high as the spike in benefit payments. That's because we used the trust fund to help cushion the impact by building up reserves when times are good and then paying benefits out of the trust fund instead of increasing taxes immediately during recessions, when benefit payments tend to spike. In 2009, the benefit cost rate, the rate that we would have needed to charge to pay for benefits, actually passed 4 ½ percent. Which means that even if the state were to have raised tax rates to the maximum amount outlined in statute, even still, we wouldn't have quite been able to pay for benefits in that year because of just how far the benefit cost rate increased. In 2010, the Employment Security Council recommended an increase in the average tax rate from 1.33 percent to 2 percent and that, combined with the falling level of benefit payments, has narrowed the gap, where in 2011, we expect to borrow much less overall than we had to borrow in 2009 or 2010. This slide shows the solvency review that we conduct for the Employment Security Council each year, looking back to 2007. You can see that we began 2011 with a total borrowing of about $525 million. By the end of the year, in this case through September 30th of 2011, we had a net change in the trust fund of about $210 million, which left us with a net trust fund of $736 million as of the end of the year. That represents $742 million worth of borrowing from the Federal Government and about 6 million that was held in reserve in the unemployment insurance trust fund to pay benefits through the end of that time period. This table shows you the forecasts that were presented to the Employment Security council for 2012. It gives a range of potential tax rates from 2 percent to 3 percent in one-quarter of a percent increments. We expect to pay out a little under $600 million in total benefits in 2012. The revenues are really the only thing that change in this table. The taxes increasing from about $430 million estimated revenue at a 2-percent tax rate to $573 million estimated revenue with a 3-percent tax rate. And again, the Council did recommend keeping the tax rate at 2 percent for 2012. This table shows the long-term effects of those various tax rates. Under the 2-percent tax rate, we expect to repay total borrowing in about 2018. We would expect the solvency multiple, the average high-cost multiple, to reach 1.0 by 2021. We expect our borrowing to peak at about a little over $1 billion in 2014 and then gradually declining from there, as tax revenues exceed benefit payments. We expect the total interest to be a little over $200 million from 2012 until those loans are repaid. And we expect the FUTA offset credit, which is a credit that employers receive toward their federal unemployment taxes, we expect that to be increased by 1.5 percent by the time we are able to achieve some capped credits in the later part of the loan repayment period in 2016 and 2017. And this table shows the detail for the interest forecasts. We expect interest payments to increase from where they were in 2011 to a level of about 43.5 million in both 2013 and 2014 and again, declining over time as the loans begin to be repaid between 2014 and 2018. Again, all of these forecasts are estimates. The Council isn't necessarily tied to keeping the tax rate at an average of 2 percent beyond 2012. Each year, the tax rate is reviewed and can be changed as the situation warrants. Finally, we have a graphical representation of the five tax rates we presented at the Council. I can see the break-even tax rate, had the Council recommended it, would've been about 2 ½ percent. So since we're going to be below 2 ½ percent, we expect that will continue to borrow in 2012. Finally, again, these are estimates. It's hard to say what will happen with the economy, obviously, over the next 5 to 10 years. One interesting note is that over the last 50 years, the average length of time from the end of one recession to the beginning of a new recession, it's been about 5 ½ years. If we were to apply that to our current situation where the national recession was declared over in June 2009, that would represent a new recession beginning, on average, near the end of 2014. Obviously, this isn't a forecast that we will have a recession then but rather just a general timeline. Over the last 30 years, we've actually had two different periods with almost 10 years in-between recessions, so that 5.4 average is obviously a flexible sort of number. There's also a question about whether the economy in Nevada and the country as a whole is facing some increasing economic headwinds. There's a lot of uncertainty about what's happening with the state of Euro and with Greece and other situations. And the economy, nationally, is in a very soft position. There's also the chance that the Federal Government might take some actions to help states that have borrowed a lot of money, whether the Federal Government might provide some relief to states, as far as forgiving any loan balances or interest obligations. The Federal Government might also implement additional solvency requirements for any incentive funding and there's the potential that the Federal Government could change the way the FUTA tax rates and offset credit scenario works. And all of these would impact the forecasts, as far as when loans would be repaid and change the incentives that the Council might face in the future, as far as setting the unemployment tax rate. That concludes my presentation. I'd be happy to take any questions.

KARCH: Thank you, Mr. Schmidt. Our next presenter is Edgar Roberts, Chief of Contributions with the Employment Security Division. Mr. Roberts will provide an explanation of the tax rate schedule and discuss the impact on small businesses.

ROBERTS: Good morning. For the record, my name is Edgar Roberts and I serve as the Chief of Contributions for the Employment Security Division. Again, the purpose of this small business workshop is to discuss the proposed unemployment insurance tax rate schedule for calendar year 2012. Moving on to the next slide. State law requires the administrator to set the tax rates each year by adopting a regulation per NRS 612.550(5). Also pursuant to Nevada Revised Statute, NRS 612.310(2), it is the role of the Employment Security Council to recommend a change in contribution rates whenever it becomes necessary to protect the solvency of the Unemployment Compensation Fund. To complete this process, today's small business workshop is being conducted and will be followed by a public hearing tentatively scheduled for December 6, 2011. Moving on to slide three. The unemployment insurance program is a joint federal and state partnership. The amount an employer pays for the federal unemployment or FUTA taxes depends on the employer's participation in a federally approved state unemployment insurance program. To ensure that a proper tax and a proper credit are given for the state unemployment or SUTA taxes, the IRS requires an annual cross-match or certification process with states to validate the SUTA payments for FUTA credits. Moving onto slide four. The state unemployment or SUTA taxes collected from Nevada employers are deposited into a trust fund. This trust fund can only be used to pay benefits to unemployed Nevada workers or to repay the principal of loans that were used to pay benefits. The revenue in the trust fund cannot be used for any other purpose. The unemployment insurance tax is paid entirely by employers and there is no deduction from the employee's check for this tax. The tax rates will vary based on the employer's previous experience with unemployment. Also under federal law, these funds must be deposited in the U.S. Treasury. The funds cannot be invested in any other manner and the fund does earn interest. Moving on to slide five. At the core of the unemployment insurance program is a rating system known as an experience rating. To be in conformity with federal law, all states are required to have a method of experience rating that has been approved by the U.S. Secretary of Labor. The rating system works as follows. In Nevada, the rate for all new employers is 2.95 percent of taxable wages pursuant to NRS 612.540. The taxable wage base or taxable limit is an annual figure calculated at 66 and 2/3 percent of the annual average wage paid to Nevada workers, pursuant to NRS 612.545. Unemployment insurance taxes are paid on an individual's wages up to the taxable limit during a calendar year. In 2011, the taxable wage limit is 26,600 per employee. In 2012, the taxable wage limit will be decreasing to 26,400 per employee. Employers pay at the new employer rate of 2.95 percent for approximately 3 ½ to 4 years until they are eligible for an experience rating. Once eligible for an experience rating, an employer's rate can rage from .25 percent to 5.4 percent, depending on the individual employer's previous experience with unemployment. There are also 18 different tax classifications, pursuant to NRS 612.550(6). The annual tax rate schedule adopted through the regulatory process applies only to experience rated employers. It has no impact on new employers and the new employer rate of 2.95 percent. The standard rate established by federal law is 5.4 percent. Rates lower than 5.4 percent can be assigned under a state's experience rating system approved by the Secretary of Labor. The intent of any experience rating system is to assign individual tax rates based on the employer's potential risk to the trust fund. Basically, those employers with high employee turnover and a greater risk to the fund pay higher rates than those with lower employee turnover. Moving on to slide six. Based on the 2-percent recommendation, this slide shows an employers maximum cost per employee with ranges from the highest rate of $1,436 per employee to the lowest rate of $66.50 per employee in calendar year 2011. In calendar year 2012, the maximum annual cost per employee will decrease slightly by .72 percent, due to a decrease in the average annual wage and annual taxable wage limit, with ranges from the highest rate of $1,425.60 per employee to the lowest rate of $66. Moving on to slide seven. To measure an employer's experience with unemployment, Nevada, along with a majority of states, use a reserve ratio experience rating system. Under the reserve ratio system, the Employment Security Division keeps separate records for each employer to calculate their reserve ratio each year. In the formula used to calculate employer's reserve ratio, we add all contributions or unemployment insurance taxes paid by the employer and then subtract the benefits charged to the employer. The result is then divided by the employer's average taxable payroll for the last three completed calendar years. This calculation establishes the employer's reserve ratio. The purpose of using this method is to put large and small employers on equal footing without regard to industry type. For example, if an employer paid 6,000 in contributions, had 2,000 in benefit charges with an average taxable payroll of 40,000, the employer would have a reserve ratio of positive 10 percent. The higher the ratio, the lower the tax will be for the employer. If an employer has received more benefit charges than they have paid in taxes, the employer's reserve ratio will be negative and the employer will generally have a higher tax rate. The reserve ratios calculated for each experience rated employer are then applied to an annual tax rate schedule to determine which rate classification will apply for that employer for that calendar year. Moving on to slide eight. Let's look at the detailed tax schedule proposed for adoption by the Council and approved by the Administrator for calendar year 2012. In setting the annual tax rate schedule, the 18 different tax rates displayed in the fourth column of this chart do not change. These rate classes ranging from .25 percent to 5.4 percent are fixed by statute. Instead, the law requires the Employee Security Division Administrator to designate the ranges of reserve ratios to be assigned to each tax rate for the calendar year. By doing so, the number of employers and each of the tax rates is changed, which increases or decreases the average tax rate and the total estimated revenues. The law also requires that the increments between the reserve ratios' ranges must be uniform. In this chart, for the average tax rate of 2 percent, the ranges are from a positive 11.4 to a negative 14.2, with increments of 1.6 between each of the reserve ratios. If an employer's reserve ratio is a positive 11.4 or more, they will receive the lowest tax rate of .25 percent. An employer with a reserve ratio of less than a negative 14.2 or more would receive the highest tax rate of 5.40 percent. And the rest of the employers fall somewhere in between. This chart also shows us that approximately 35.2 percent of eligible employers remain in the lowest rate of .25 percent. And 10.3 percent of eligible employers are in the highest rate of 5.40 percent. Out of the 56,542 total employers, there are 35,711 employers eligible for experience rating, which is estimated to generate 386 million in revenue to the unemployment insurance trust fund. To this, we add the estimate for new employers, not eligible for experience rating, an estimated 51.6 million, for a total revenue of approximately 438 million for the average unemployment tax rate of 2 percent. As a note, you will see that there is an additional .5 percent of tax for the Career Enhancement Program or CEP, which is a separate state training tax set by statute. This is being provided for informational purposes only and is not included in the projected revenue amounts. Moving on to slide nine. On October 4, 2011, the Employment Security Council unanimously recommended to keep the current unemployment tax at 2 percent for experience rated employers for the upcoming calendar year 2012. Moving to slide 10. In compliance with NRS .233(b), I'm now going to provide a statement of the projected impact of keeping the unemployment tax rate at 2 percent for small businesses in Nevada. All Nevada employers subject to Nevada's unemployment compensation law that pay unemployment insurance tax rates subject to the experience rating system are affected by the proposed regulation. This constitutes approximately 35,711 or 63 percent of the total registered businesses. However, the rate for the individual small businesses will either increase or decrease, depending on each individual business experience record within the program. Employers with a high employee turnover rate will more likely shift into a higher tax rate while those who retain their employees and have a low employee turnover rate may move into a lower tax rate. Moving on to slide 11. For informational purposes, the average unemployment tax rate for Nevada employers has remained relatively low and stable for the last 10 years. At the end of calendar year 2007, Nevada had a strong trust fund, as was mentioned by Dave Schmidt, with a balance of approximately 800 million. However, the historic depth of the recent recession depleted Nevada's trust fund reserves in October of 2009. At that point, Nevada began borrowing from the federal unemployment account in order to pay benefits to Nevada's unemployed workers. Since July of 2008, unemployment insurance benefits, including those paid by the Nevada trust fund and those provided by a federal payment of extended benefits, have infused approximately 5.2 billion into Nevada's economy, providing a direct economic stabilizer for both workers and businesses. Moving on to slide 12. Since the recommendation by the Employment Security Council is to keep the average tax rate the same as last year's 2 percent rate, it is anticipated the tax burden overall is not shifting. Because the individual experiences of all employers statewide is constantly changing, keeping the average tax rate constant at 2 percent for 2012 will move employers in both the maximum and minimum rates. The primary cause of a change at any employer's suited tax rate will be due to changes in their own reserve ratio. Moving on to slide 13. This slide shows the number of small employer distribution, highlighted in yellow, at the rate of 2 percent. Maintaining the 2 percent rate as recommended by the Employment Security Council, would apply to an estimated 34,739 small businesses. For this analysis, a small business is defined as those with 149 employees or less by NRS .233(b). Moving on to slide 14. Maintaining the rate at 2 percent is expected to generate approximately 438 million to the trust fund in calendar year 2012. Since small business' taxable wages account for 44 percent of all taxable wages in the state, approximately 193 million of the total revenue will be credited to small businesses. The direct impact on each individual business will vary based on each employer's experience with the unemployment compensation program. Moving to slide 15. By maintaining the rate at 2 percent, the State of Nevada can control the current deficit spending and accrual of interest on outstanding unemployment compensation program loans. Improving the status of Nevada's trust fund may also reduce mandatory federal tax increases under the Federal Unemployment Tax Act or FUTA. Moving to slide 16. Nevada's unemployment compensation program is based on an experience rating system, which is approved by the U.S. Department of Labor. The system is designed to ensure that employers are equally rated based on their unique experience with unemployment, regardless of size or industry type. By having a federally approved rate system, employers are allowed to offset credit against the federal unemployment tax. This is a saving of about 400 million per year to Nevada's employers. Moving to slide 17. In regards to this regulation, there is no additional cost for the enforcement of this regulation, per NAC 612.270. Each year, the Administrator establishes the employer contribution rates as required by NRS 612.550. All funds for the administration of the employment compensation program are provided by the U.S. Department of Labor. Moving on to slide 18. By maintaining the current tax rate at 2 percent, it is anticipated that the rate will maintain the integrity of the trust fund in calendar year 2012. Small businesses will account for approximately 44 percent of the revenues or approximately 193 million of the total revenue to Nevada's unemployment insurance trust fund. Maintaining this current rate is necessary to reduce the amount of federal borrowing required to fund unemployment insurance benefit payments to Nevada workers who find themselves out of work through no fault of their own. Moving on to the last slide of this presentation, number 19. This regulation does not duplicate or provide a more stringent standard than any other regulation of federal, state, local governments. As a final note, no written comments have been received by the Division in regards to the impact of a potential rate change. This concludes my presentation, Mr. Karch. Thank you.

KARCH: Thank you, Mr. Roberts. Now, I would like to open the workshop for public comment. If you would like to provide public comment, please come forward to the microphone in either location and identify yourself clearly for the record, Las Vegas or Carson City.

MARTINEZ: For the record, Art Martinez. No public comments at this time.

BEDROSIAN: Mr. Karch, Flo Bedrosian, Employment Security Division. I wanted to clarify for the record. I think you asked me in the beginning about if any written comments were received. In hearing Mr. Roberts say there were none, I think I responded, yes, there were some and there were not. I was answering the question thinking you were asking me if I asked for written comments and I did, but we did not receive any in any location, so there are no written comments. So I just wanted to clarify that for the record.

KARCH: There are no written comments?

BEDROSIAN: Correct.

KARCH: Would anyone like to step forward and speak? For the record, there is no one in Carson City or Las Vegas who would like to comment on this issue. Thank you to everyone who has participated in the regulatory process for the unemployment insurance tax schedule for calendar quarter 2012. The next step of the process is the adoption of the recommendation of the tax rate schedule for calendar year 2012. The public hearing for the attempt to adopt regulation is scheduled on Tuesday, December 6, 2011 at 10:00 a.m. in the same locations as today. Before we adjourn, I would like to offer one last opportunity for public comment. In Las Vegas?

MARTINEZ: Again for the record, Art Martinez. No public comments.

KARCH: Carson City? See none. Thank you everyone. The meeting is adjourned.

END OF RECORDING