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**SUBSTITUTE HOUSE BILL 2648**

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**State of Washington                      61st Legislature                      2010 Regular Session**

**By** House Commerce & Labor (originally sponsored by Representatives Kenney, Conway, Green, Moeller, Williams, Simpson, and White; by request of Employment Security Department)

READ FIRST TIME 01/21/10.

1            AN ACT Relating to unemployment insurance penalties and  
2 contribution rates for employers who are not "qualified employers";  
3 reenacting and amending RCW 50.29.025; adding a new section to chapter  
4 50.12 RCW; creating a new section; prescribing penalties; and providing  
5 an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            **Sec. 1.** RCW 50.29.025 and 2009 c 493 s 2 and 2009 c 3 s 14 are  
8 each reenacted and amended to read as follows:

9            (1) For contributions assessed for rate years 2005 through 2009,  
10 the contribution rate for each employer subject to contributions under  
11 RCW 50.24.010 shall be the sum of the array calculation factor rate and  
12 the graduated social cost factor rate determined under this subsection,  
13 and the solvency surcharge determined under RCW 50.29.041, if any.

14            (a) The array calculation factor rate shall be determined as  
15 follows:

16            (i) An array shall be prepared, listing all qualified employers in  
17 ascending order of their benefit ratios. The array shall show for each  
18 qualified employer: (A) Identification number; (B) benefit ratio; and

1 (C) taxable payrolls for the four consecutive calendar quarters  
2 immediately preceding the computation date and reported to the  
3 employment security department by the cut-off date.

4 (ii) Each employer in the array shall be assigned to one of forty  
5 rate classes according to his or her benefit ratio as follows, and,  
6 except as provided in RCW 50.29.026, the array calculation factor rate  
7 for each employer in the array shall be the rate specified in the rate  
8 class to which the employer has been assigned:

9	Benefit Ratio		Rate	Rate
10	At least	Less than	Class	(percent)
11		0.000001	1	0.00
12	0.000001	0.001250	2	0.13
13	0.001250	0.002500	3	0.25
14	0.002500	0.003750	4	0.38
15	0.003750	0.005000	5	0.50
16	0.005000	0.006250	6	0.63
17	0.006250	0.007500	7	0.75
18	0.007500	0.008750	8	0.88
19	0.008750	0.010000	9	1.00
20	0.010000	0.011250	10	1.15
21	0.011250	0.012500	11	1.30
22	0.012500	0.013750	12	1.45
23	0.013750	0.015000	13	1.60
24	0.015000	0.016250	14	1.75
25	0.016250	0.017500	15	1.90
26	0.017500	0.018750	16	2.05
27	0.018750	0.020000	17	2.20
28	0.020000	0.021250	18	2.35
29	0.021250	0.022500	19	2.50
30	0.022500	0.023750	20	2.65
31	0.023750	0.025000	21	2.80
32	0.025000	0.026250	22	2.95
33	0.026250	0.027500	23	3.10
34	0.027500	0.028750	24	3.25
35	0.028750	0.030000	25	3.40
36	0.030000	0.031250	26	3.55

1	0.031250	0.032500	27	3.70
2	0.032500	0.033750	28	3.85
3	0.033750	0.035000	29	4.00
4	0.035000	0.036250	30	4.15
5	0.036250	0.037500	31	4.30
6	0.037500	0.040000	32	4.45
7	0.040000	0.042500	33	4.60
8	0.042500	0.045000	34	4.75
9	0.045000	0.047500	35	4.90
10	0.047500	0.050000	36	5.05
11	0.050000	0.052500	37	5.20
12	0.052500	0.055000	38	5.30
13	0.055000	0.057500	39	5.35
14	0.057500		40	5.40

15 (b) The graduated social cost factor rate shall be determined as  
16 follows:

17 (i)(A) Except as provided in (b)(i)(B) and (C) of this subsection,  
18 the commissioner shall calculate the flat social cost factor for a rate  
19 year by dividing the total social cost by the total taxable payroll.  
20 The division shall be carried to the second decimal place with the  
21 remaining fraction disregarded unless it amounts to five hundredths or  
22 more, in which case the second decimal place shall be rounded to the  
23 next higher digit. The flat social cost factor shall be expressed as  
24 a percentage.

25 (B) If, on the cut-off date, the balance in the unemployment  
26 compensation fund is determined by the commissioner to be an amount  
27 that will provide more than ten months of unemployment benefits, the  
28 commissioner shall calculate the flat social cost factor for the rate  
29 year immediately following the cut-off date by reducing the total  
30 social cost by the dollar amount that represents the number of months  
31 for which the balance in the unemployment compensation fund on the cut-  
32 off date will provide benefits above ten months and dividing the result  
33 by the total taxable payroll. However, the calculation under this  
34 subsection (1)(b)(i)(B) for a rate year may not result in a flat social  
35 cost factor that is more than four-tenths lower than the calculation  
36 under (b)(i)(A) of this subsection for that rate year.

1 For the purposes of this subsection, the commissioner shall  
2 determine the number of months of unemployment benefits in the  
3 unemployment compensation fund using the benefit cost rate for the  
4 average of the three highest calendar benefit cost rates in the twenty  
5 consecutive completed calendar years immediately preceding the cut-off  
6 date or a period of consecutive calendar years immediately preceding  
7 the cut-off date that includes three recessions, if longer.

8 (C) The minimum flat social cost factor calculated under this  
9 subsection (1)(b) shall be six-tenths of one percent, except that if  
10 the balance in the unemployment compensation fund is determined by the  
11 commissioner to be an amount that will provide:

12 (I) At least twelve months but less than fourteen months of  
13 unemployment benefits, the minimum shall be five-tenths of one percent;  
14 or

15 (II) At least fourteen months of unemployment benefits, the minimum  
16 shall be five-tenths of one percent, except that, for employers in rate  
17 class 1, the minimum shall be forty-five hundredths of one percent.

18 (ii)(A) Except as provided in (b)(ii)(B) of this subsection, the  
19 graduated social cost factor rate for each employer in the array is the  
20 flat social cost factor multiplied by the percentage specified as  
21 follows for the rate class to which the employer has been assigned in  
22 (a)(ii) of this subsection, except that the sum of an employer's array  
23 calculation factor rate and the graduated social cost factor rate may  
24 not exceed six and five-tenths percent or, for employers whose North  
25 American industry classification system code is within "111," "112,"  
26 "1141," "115," "3114," "3117," "42448," or "49312," may not exceed six  
27 percent through rate year 2007 and may not exceed five and seven-tenths  
28 percent for rate years 2008 and 2009:

- 29 (I) Rate class 1 - 78 percent;
- 30 (II) Rate class 2 - 82 percent;
- 31 (III) Rate class 3 - 86 percent;
- 32 (IV) Rate class 4 - 90 percent;
- 33 (V) Rate class 5 - 94 percent;
- 34 (VI) Rate class 6 - 98 percent;
- 35 (VII) Rate class 7 - 102 percent;
- 36 (VIII) Rate class 8 - 106 percent;
- 37 (IX) Rate class 9 - 110 percent;
- 38 (X) Rate class 10 - 114 percent;

1 (XI) Rate class 11 - 118 percent; and

2 (XII) Rate classes 12 through 40 - 120 percent.

3 (B) For contributions assessed beginning July 1, 2005, through  
4 December 31, 2007, for employers whose North American industry  
5 classification system code is "111," "112," "1141," "115," "3114,"  
6 "3117," "42448," or "49312," the graduated social cost factor rate is  
7 zero.

8 (iii) For the purposes of this section:

9 (A) "Total social cost" means the amount calculated by subtracting  
10 the array calculation factor contributions paid by all employers with  
11 respect to the four consecutive calendar quarters immediately preceding  
12 the computation date and paid to the employment security department by  
13 the cut-off date from the total unemployment benefits paid to claimants  
14 in the same four consecutive calendar quarters. To calculate the flat  
15 social cost factor for rate year 2005, the commissioner shall calculate  
16 the total social cost using the array calculation factor contributions  
17 that would have been required to be paid by all employers in the  
18 calculation period if (a) of this subsection had been in effect for the  
19 relevant period. To calculate the flat social cost factor for rate  
20 years 2010 and 2011, the forty-five dollar increase paid as part of an  
21 individual's weekly benefit amount as provided in RCW 50.20.1201 shall  
22 not be considered for purposes of calculating the total unemployment  
23 benefits paid to claimants in the four consecutive calendar quarters  
24 immediately preceding the computation date.

25 (B) "Total taxable payroll" means the total amount of wages subject  
26 to tax, as determined under RCW 50.24.010, for all employers in the  
27 four consecutive calendar quarters immediately preceding the  
28 computation date and reported to the employment security department by  
29 the cut-off date.

30 (c) For employers who do not meet the definition of "qualified  
31 employer" by reason of failure to pay contributions when due:

32 (i) The array calculation factor rate shall be two-tenths higher  
33 than that in rate class 40, except employers who have an approved  
34 agency-deferred payment contract by September 30th of the previous rate  
35 year. If any employer with an approved agency-deferred payment  
36 contract fails to make any one of the succeeding deferred payments or  
37 fails to submit any succeeding tax report and payment in a timely

1 manner, the employer's tax rate shall immediately revert to an array  
2 calculation factor rate two-tenths higher than that in rate class 40;  
3 and

4 (ii) The social cost factor rate shall be the social cost factor  
5 rate assigned to rate class 40 under (b)(ii) of this subsection.

6 (d) For all other employers not qualified to be in the array:

7 (i) For rate years 2005, 2006, and 2007:

8 (A) The array calculation factor rate shall be a rate equal to the  
9 average industry array calculation factor rate as determined by the  
10 commissioner, plus fifteen percent of that amount; however, the rate  
11 may not be less than one percent or more than the array calculation  
12 factor rate in rate class 40; and

13 (B) The social cost factor rate shall be a rate equal to the  
14 average industry social cost factor rate as determined by the  
15 commissioner, plus fifteen percent of that amount, but not more than  
16 the social cost factor rate assigned to rate class 40 under (b)(ii) of  
17 this subsection.

18 (ii) For contributions assessed for rate years 2008 and 2009:

19 (A) The array calculation factor rate shall be a rate equal to the  
20 average industry array calculation factor rate as determined by the  
21 commissioner, multiplied by the history factor, but not less than one  
22 percent or more than the array calculation factor rate in rate class  
23 40;

24 (B) The social cost factor rate shall be a rate equal to the  
25 average industry social cost factor rate as determined by the  
26 commissioner, multiplied by the history factor, but not more than the  
27 social cost factor rate assigned to rate class 40 under (b)(ii) of this  
28 subsection; and

29 (C) The history factor shall be based on the total amounts of  
30 benefits charged and contributions paid in the three fiscal years  
31 ending prior to the computation date by employers not qualified to be  
32 in the array, other than employers in (c) of this subsection, who were  
33 first subject to contributions in the calendar year ending three years  
34 prior to the computation date. The commissioner shall calculate the  
35 history ratio by dividing the total amount of benefits charged by the  
36 total amount of contributions paid in this three-year period by these  
37 employers. The division shall be carried to the second decimal place  
38 with the remaining fraction disregarded unless it amounts to five

1 one-hundredths or more, in which case the second decimal place shall be  
 2 rounded to the next higher digit. The commissioner shall determine the  
 3 history factor according to the history ratio as follows:

	History Ratio		History Factor (percent)
	At least	Less than	
4			
5			
6			
7			
8	(I)	.95	90
9	(II)	.95	100
10	(III)	1.05	115

11 (2) For contributions assessed in rate year 2010 and thereafter,  
 12 the contribution rate for each employer subject to contributions under  
 13 RCW 50.24.010 shall be the sum of the array calculation factor rate and  
 14 the graduated social cost factor rate determined under this subsection,  
 15 and the solvency surcharge determined under RCW 50.29.041, if any.

16 (a) The array calculation factor rate shall be determined as  
 17 follows:

18 (i) An array shall be prepared, listing all qualified employers in  
 19 ascending order of their benefit ratios. The array shall show for each  
 20 qualified employer: (A) Identification number; (B) benefit ratio; and  
 21 (C) taxable payrolls for the four consecutive calendar quarters  
 22 immediately preceding the computation date and reported to the  
 23 employment security department by the cut-off date.

24 (ii) Each employer in the array shall be assigned to one of forty  
 25 rate classes according to his or her benefit ratio as follows, and,  
 26 except as provided in RCW 50.29.026, the array calculation factor rate  
 27 for each employer in the array shall be the rate specified in the rate  
 28 class to which the employer has been assigned:

	Benefit Ratio		Rate Class	Rate (percent)
	At least	Less than		
29				
30				
31		0.000001	1	0.00
32	0.000001	0.001250	2	0.11
33	0.001250	0.002500	3	0.22

1	0.002500	0.003750	4	0.33
2	0.003750	0.005000	5	0.43
3	0.005000	0.006250	6	0.54
4	0.006250	0.007500	7	0.65
5	0.007500	0.008750	8	0.76
6	0.008750	0.010000	9	0.88
7	0.010000	0.011250	10	1.01
8	0.011250	0.012500	11	1.14
9	0.012500	0.013750	12	1.28
10	0.013750	0.015000	13	1.41
11	0.015000	0.016250	14	1.54
12	0.016250	0.017500	15	1.67
13	0.017500	0.018750	16	1.80
14	0.018750	0.020000	17	1.94
15	0.020000	0.021250	18	2.07
16	0.021250	0.022500	19	2.20
17	0.022500	0.023750	20	2.38
18	0.023750	0.025000	21	2.50
19	0.025000	0.026250	22	2.63
20	0.026250	0.027500	23	2.75
21	0.027500	0.028750	24	2.88
22	0.028750	0.030000	25	3.00
23	0.030000	0.031250	26	3.13
24	0.031250	0.032500	27	3.25
25	0.032500	0.033750	28	3.38
26	0.033750	0.035000	29	3.50
27	0.035000	0.036250	30	3.63
28	0.036250	0.037500	31	3.75
29	0.037500	0.040000	32	4.00
30	0.040000	0.042500	33	4.25
31	0.042500	0.045000	34	4.50
32	0.045000	0.047500	35	4.75
33	0.047500	0.050000	36	5.00
34	0.050000	0.052500	37	5.15
35	0.052500	0.055000	38	5.25
36	0.055000	0.057500	39	5.30
37	0.057500		40	5.40



1 (b) The graduated social cost factor rate shall be determined as  
2 follows:

3 (i)(A) Except as provided in (b)(i)(B) and (C) of this subsection,  
4 the commissioner shall calculate the flat social cost factor for a rate  
5 year by dividing the total social cost by the total taxable payroll.  
6 The division shall be carried to the second decimal place with the  
7 remaining fraction disregarded unless it amounts to five hundredths or  
8 more, in which case the second decimal place shall be rounded to the  
9 next higher digit. The flat social cost factor shall be expressed as  
10 a percentage.

11 (B) If, on the cut-off date, the balance in the unemployment  
12 compensation fund is determined by the commissioner to be an amount  
13 that will provide more than ten months of unemployment benefits, the  
14 commissioner shall calculate the flat social cost factor for the rate  
15 year immediately following the cut-off date by reducing the total  
16 social cost by the dollar amount that represents the number of months  
17 for which the balance in the unemployment compensation fund on the cut-  
18 off date will provide benefits above ten months and dividing the result  
19 by the total taxable payroll. However, the calculation under this  
20 subsection (2)(b)(i)(B) for a rate year may not result in a flat social  
21 cost factor that is more than four-tenths lower than the calculation  
22 under (b)(i)(A) of this subsection for that rate year.

23 For the purposes of this subsection, the commissioner shall  
24 determine the number of months of unemployment benefits in the  
25 unemployment compensation fund using the benefit cost rate for the  
26 average of the three highest calendar benefit cost rates in the twenty  
27 consecutive completed calendar years immediately preceding the cut-off  
28 date or a period of consecutive calendar years immediately preceding  
29 the cut-off date that includes three recessions, if longer.

30 (C) The minimum flat social cost factor calculated under this  
31 subsection (2)(b) shall be six-tenths of one percent, except that if  
32 the balance in the unemployment compensation fund is determined by the  
33 commissioner to be an amount that will provide:

34 (I) At least ten months but less than eleven months of unemployment  
35 benefits, the minimum shall be five-tenths of one percent; or

36 (II) At least eleven months but less than twelve months of  
37 unemployment benefits, the minimum shall be forty-five hundredths of  
38 one percent; or

1 (III) At least twelve months but less than thirteen months of  
2 unemployment benefits, the minimum shall be four-tenths of one percent;  
3 or

4 (IV) At least thirteen months but less than fifteen months of  
5 unemployment benefits, the minimum shall be thirty-five hundredths of  
6 one percent; or

7 (V) At least fifteen months but less than seventeen months of  
8 unemployment benefits, the minimum shall be twenty-five hundredths of  
9 one percent; or

10 (VI) At least seventeen months but less than eighteen months of  
11 unemployment benefits, the minimum shall be fifteen hundredths of one  
12 percent; or

13 (VII) At least eighteen months of unemployment benefits, the  
14 minimum shall be fifteen hundredths of one percent through rate year  
15 2011 and shall be zero thereafter.

16 (ii) The graduated social cost factor rate for each employer in the  
17 array is the flat social cost factor multiplied by the percentage  
18 specified as follows for the rate class to which the employer has been  
19 assigned in (a)(ii) of this subsection, except that the sum of an  
20 employer's array calculation factor rate and the graduated social cost  
21 factor rate may not exceed six percent or, for employers whose North  
22 American industry classification system code is within "111," "112,"  
23 "1141," "115," "3114," "3117," "42448," or "49312," may not exceed five  
24 and four-tenths percent:

- 25 (A) Rate class 1 - 78 percent;
- 26 (B) Rate class 2 - 82 percent;
- 27 (C) Rate class 3 - 86 percent;
- 28 (D) Rate class 4 - 90 percent;
- 29 (E) Rate class 5 - 94 percent;
- 30 (F) Rate class 6 - 98 percent;
- 31 (G) Rate class 7 - 102 percent;
- 32 (H) Rate class 8 - 106 percent;
- 33 (I) Rate class 9 - 110 percent;
- 34 (J) Rate class 10 - 114 percent;
- 35 (K) Rate class 11 - 118 percent; and
- 36 (L) Rate classes 12 through 40 - 120 percent.

37 (iii) For the purposes of this section:

1 (A) "Total social cost" means the amount calculated by subtracting  
2 the array calculation factor contributions paid by all employers with  
3 respect to the four consecutive calendar quarters immediately preceding  
4 the computation date and paid to the employment security department by  
5 the cut-off date from the total unemployment benefits paid to claimants  
6 in the same four consecutive calendar quarters.

7 (B) "Total taxable payroll" means the total amount of wages subject  
8 to tax, as determined under RCW 50.24.010, for all employers in the  
9 four consecutive calendar quarters immediately preceding the  
10 computation date and reported to the employment security department by  
11 the cut-off date.

12 (c) For employers who do not meet the definition of "qualified  
13 employer" by reason of failure to pay contributions when due:

14 (i) For rate years through 2010:

15 (A) The array calculation factor rate shall be two-tenths higher  
16 than that in rate class 40, except employers who have an approved  
17 agency-deferred payment contract by September 30th of the previous rate  
18 year. If any employer with an approved agency-deferred payment  
19 contract fails to make any one of the succeeding deferred payments or  
20 fails to submit any succeeding tax report and payment in a timely  
21 manner, the employer's tax rate shall immediately revert to an array  
22 calculation factor rate two-tenths higher than that in rate class 40;  
23 and

24 ((+ii)) (B) The social cost factor rate shall be the social cost  
25 factor rate assigned to rate class 40 under (b)(ii) of this subsection.

26 (ii) For rate years 2011 and thereafter:

27 (A)(I) For an employer who does not enter into an approved agency-  
28 deferred payment contract as described in (c)(ii)(A)(II) or (III) of  
29 this subsection, the array calculation factor rate shall be the rate it  
30 would have been if the employer had not been delinquent in payment plus  
31 an additional one percent or, if the employer is delinquent in payment  
32 for a second or more consecutive year, an additional two percent;

33 (II) For an employer who enters an approved agency-deferred payment  
34 contract by September 30th of the previous rate year, the array  
35 calculation factor rate shall be the rate it would have been if the  
36 employer had not been delinquent in payment;

37 (III) For an employer who enters an approved agency-deferred  
38 payment contract after September 30th of the previous rate year, but

1 within thirty days of the date the department sent its first tax rate  
2 notice, the array calculation factor rate shall be the rate it would  
3 have been had the employer not been delinquent in payment plus an  
4 additional one-half of one percent or, if the employer is delinquent in  
5 payment for a second or more consecutive year, an additional one and  
6 one-half percent;

7 (IV) For an employer who enters an approved agency-deferred payment  
8 contract as described in (c)(ii)(A)(II) or (III) of this subsection,  
9 but who fails to make any one of the succeeding deferred payments or  
10 fails to submit any succeeding tax report and payment in a timely  
11 manner, the array calculation factor rate shall immediately revert to  
12 the applicable array calculation factor rate under (c)(ii)(A)(I) of  
13 this subsection; and

14 (B) The social cost factor rate shall be the social cost factor  
15 rate assigned to rate class 40 under (b)(ii) of this subsection.

16 (d) For all other employers not qualified to be in the array:

17 (i) The array calculation factor rate shall be a rate equal to the  
18 average industry array calculation factor rate as determined by the  
19 commissioner, multiplied by the history factor, but not less than one  
20 percent or more than the array calculation factor rate in rate class  
21 40;

22 (ii) The social cost factor rate shall be a rate equal to the  
23 average industry social cost factor rate as determined by the  
24 commissioner, multiplied by the history factor, but not more than the  
25 social cost factor rate assigned to rate class 40 under (b)(ii) of this  
26 subsection; and

27 (iii) The history factor shall be based on the total amounts of  
28 benefits charged and contributions paid in the three fiscal years  
29 ending prior to the computation date by employers not qualified to be  
30 in the array, other than employers in (c) of this subsection, who were  
31 first subject to contributions in the calendar year ending three years  
32 prior to the computation date. The commissioner shall calculate the  
33 history ratio by dividing the total amount of benefits charged by the  
34 total amount of contributions paid in this three-year period by these  
35 employers. The division shall be carried to the second decimal place  
36 with the remaining fraction disregarded unless it amounts to five  
37 one-hundredths or more, in which case the second decimal place shall be

1 rounded to the next higher digit. The commissioner shall determine the  
2 history factor according to the history ratio as follows:

	History		History
	Ratio		Factor
			(percent)
6	At least	Less than	
7	(A)	.95	90
8	(B)	.95	100
9	(C)	1.05	115

10 (3) Assignment of employers by the commissioner to industrial  
11 classification, for purposes of this section, shall be in accordance  
12 with established classification practices found in the North American  
13 industry classification system code.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 50.12 RCW  
15 to read as follows:

16 An employer that knowingly fails to register with the department  
17 and obtain an employment security account number, as required under RCW  
18 50.12.070(2), is subject to a penalty not to exceed one thousand  
19 dollars per quarter or two times the taxes due per quarter, whichever  
20 is greater. This penalty is in addition to all other penalties and is  
21 in addition to higher rates for employers that do not meet the  
22 definition of "qualified employer" under RCW 50.29.010. This penalty  
23 does not apply if the employer can prove that it had good cause to  
24 believe that it was not required to register with the department.

25 NEW SECTION. **Sec. 3.** If any part of this act is found to be in  
26 conflict with federal requirements that are a prescribed condition to  
27 the allocation of federal funds to the state or the eligibility of  
28 employers in this state for federal unemployment tax credits, the  
29 conflicting part of this act is inoperative solely to the extent of the  
30 conflict, and the finding or determination does not affect the  
31 operation of the remainder of this act. Rules adopted under this act  
32 must meet federal requirements that are a necessary condition to the

1 receipt of federal funds by the state or the granting of federal  
2 unemployment tax credits to employers in this state.

3 NEW SECTION. **Sec. 4.** If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 5.** Section 2 of this act takes effect January  
8 1, 2011.

--- END ---