

FINAL BILL REPORT

SHB 2491

C 2 L 12 E1
Synopsis as Enacted

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).

House Committee on Labor & Workforce Development
Senate Committee on Labor, Commerce & Consumer Protection

Background:

Most employment in the state is covered for unemployment insurance. Each covered taxable employer is required to pay contributions on a percentage of his or her taxable payroll.

The contribution rate is generally the combined rate assigned to the employer based on layoff experience, social costs, and the solvency surcharge, if any. The contribution rate is assigned differently, however, for a successor employer.

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.

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.

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:

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."

Votes on Final Passage:

House 97 0

First Special Session

House 94 0

Senate 40 0

Effective: July 10, 2012