

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIRST LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1086

Introduced by McCoy, 39.

Read first time January 21, 2010

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Employment Security Law; to amend
2 section 48-649, Revised Statutes Supplement, 2009; to
3 change provisions relating to determination of the state
4 unemployment insurance tax rate and require a hearing;
5 and to repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-649, Revised Statutes Supplement,
2 2009, is amended to read:

3 48-649 The commissioner shall, for each calendar year,
4 determine the combined tax rate applicable to each employer on
5 the basis of his or her actual experience in the payment of
6 contributions and with respect to benefits charged against his or
7 her separate experience account, in accordance with the following
8 requirements:

9 (1) Each calendar year: The commissioner shall, by
10 December 1, ~~of each calendar year,~~ and based upon information
11 available through the department, ~~determine~~ make an initial
12 determination of the state unemployment insurance tax rate for the
13 following year and communicate that a final determination of the
14 tax rate, or phase in requirements, of all categories of the tax
15 rate will be available via the department web site by December 20.
16 By December 15, the commissioner shall hold a public hearing to
17 receive testimony on the proposed tax rate. Based upon information
18 available through the department and with consideration given to
19 testimony received from the public, the commissioner shall then
20 determine whether or not to adjust the initial tax rate or phase it
21 in for the period of January 1 through June 30 of the following
22 year and the proposed tax rate for July 1 through December 31. By
23 June 1, the commissioner shall set the tax rate for July 1 through
24 December 31.

25 The state unemployment insurance tax rate shall be zero

1 percent if:

2 (a) The average balance in the State Unemployment
3 Insurance Trust Fund at the end of any three months in the
4 preceding calendar year is greater than one percent of state
5 taxable wages for the same preceding year; or

6 (b) The balance in the State Unemployment Insurance Trust
7 Fund equals or exceeds thirty percent of the average month end
8 balance of the state's account in the Unemployment Trust Fund for
9 the three lowest calendar months in the preceding year;

10 (2) (a) If the state unemployment insurance tax rate is
11 not zero percent as determined in this section, the combined
12 tax rate shall be divided so that not less than eighty percent
13 of the combined tax rate equals the contribution rate and not
14 more than twenty percent of the combined tax rate equals the
15 state unemployment insurance tax rate except for employers who are
16 assigned a combined tax rate of five and four-tenths percent or
17 more. For those employers, the state unemployment insurance tax
18 rate shall equal zero and their combined tax rate shall equal their
19 contribution rate.

20 (b) When the state unemployment insurance tax rate is
21 determined to be zero percent pursuant to subdivision (1) of this
22 section, the contribution rate for all employers shall equal one
23 hundred percent of the combined tax rate;

24 (3) In calendar year 2005, an employer's combined tax
25 rate shall be three and five-tenths percent of his or her annual

1 payroll unless and until (a) benefits have been payable from
2 and chargeable to his or her experience account throughout the
3 preceding one calendar year and (b) contributions have been payable
4 to the fund and credited to his or her experience account with
5 respect to the two preceding calendar years. Subject to fair and
6 reasonable rules and regulations of the commissioner issued with
7 due regard for the solvency of the fund, in calendar year 2005
8 the combined tax rate required of each employer who meets the
9 requirements of subdivisions (a) and (b) of this subdivision shall
10 be based directly on his or her contributions to and benefit
11 experience of his or her experience account and shall be determined
12 by the commissioner for each calendar year at its beginning. Such
13 rate shall not be greater than three and five-tenths percent of his
14 or her annual payroll if his or her experience account exhibits a
15 positive balance as of the beginning of such calendar year, but for
16 any employer who has been subject to the payment of contributions
17 for any two preceding calendar years, regardless of whether such
18 years are consecutive, and whose experience account exhibits a
19 negative balance as of the beginning of such calendar year, the
20 rate shall be greater than three and five-tenths percent of his
21 or her annual payroll but not greater than five and four-tenths
22 percent of his or her annual payroll until such time as the
23 experience account exhibits a positive balance, and thereafter the
24 rate shall not be greater than three and five-tenths percent of
25 his or her annual payroll. For calendar year 2005, the standard

1 rate shall be five and four-tenths percent of the employer's annual
2 payroll. As used in this subdivision, standard rate shall mean the
3 rate from which all reduced rates are calculated;

4 (4) (a) Effective January 1, 2006, an employer's combined
5 tax rate (i) for employers other than employers engaged in the
6 construction industry shall be the lesser of the state's average
7 combined tax rate as determined pursuant to subdivisions (4) (e),
8 (4) (f), and (4) (g) of this section or two and five-tenths percent
9 and (ii) for employers in the construction industry shall be the
10 category twenty rate determined pursuant to subdivisions (4) (e) and
11 (4) (f) of this section, unless and until:

12 (A) Benefits have been payable from and chargeable to his
13 or her experience account throughout the preceding four calendar
14 quarters; and

15 (B) Wages for employment have been paid by the employer
16 in each of the two preceding four-calendar-quarter periods.

17 For purposes of this subdivision (4) (a), employers
18 engaged in the construction industry means all employers primarily
19 engaged in business activities classified as sector 23 business
20 activities under the North American Industry Classification System.

21 (b) In no event shall the combined tax rate for employers
22 who fail to meet the requirements of subdivision (4) (a) of this
23 section be less than one and twenty-five hundredths percent.

24 (c) For any employer who has not paid wages for
25 employment during each of the two four-calendar-quarter periods

1 ending on September 30 of any year, but has paid wages for
2 employment in any two four-calendar-quarter periods, regardless of
3 whether such four-calendar-quarter periods are consecutive, such
4 employer's combined tax rate for the following tax year shall be:

5 (i) The highest combined tax rate for employers with a
6 positive experience account balance if the employer's experience
7 account balance exhibits a positive balance as of September 30 of
8 the year of rate computation; or

9 (ii) The standard rate if the employer's experience
10 account exhibits a negative balance as of September 30 of the year
11 of rate computation.

12 (d) Beginning with rate calculations for calendar year
13 2006 and each year thereafter, the combined tax rate for employers
14 who meet the requirements of subdivision (4)(a) of this section
15 shall be calculated according to subdivisions (4)(e), (4)(f), and
16 (4)(g) of this section and shall be based upon the employer's
17 experience rating record and determined from the employer's reserve
18 ratio, which is the percent obtained by dividing the amount by
19 which, if any, the employer's contributions credited from the time
20 the employer first or most recently became an employer, whichever
21 date is later, and up to and including September 30 of the year
22 the rate computation is made, plus any part of the employer's
23 contributions due for that year paid on or before October 31
24 of such year, exceed the employer's benefits charged during the
25 same period, by the employer's average annual taxable payroll for

1 the sixteen-consecutive-calendar-quarter period ending September
 2 30 of the year in which the rate computation is made. For an
 3 employer with less than sixteen consecutive calendar quarters of
 4 contribution experience, the employer's average taxable payroll
 5 shall be determined based upon the four-calendar-quarter periods
 6 for which contributions are payable.

7 (e) Each eligible experience rated employer shall be
 8 assigned to one of twenty rate categories with a corresponding
 9 experience factor as follows:

| 10 | Category | Experience Factor |
|----|----------|-------------------|
| 11 | 1 | 0.00 |
| 12 | 2 | 0.25 |
| 13 | 3 | 0.40 |
| 14 | 4 | 0.45 |
| 15 | 5 | 0.50 |
| 16 | 6 | 0.60 |
| 17 | 7 | 0.65 |
| 18 | 8 | 0.70 |
| 19 | 9 | 0.80 |
| 20 | 10 | 0.90 |
| 21 | 11 | 0.95 |
| 22 | 12 | 1.00 |
| 23 | 13 | 1.05 |
| 24 | 14 | 1.10 |
| 25 | 15 | 1.20 |

| | | |
|---|----|------|
| 1 | 16 | 1.35 |
| 2 | 17 | 1.55 |
| 3 | 18 | 1.80 |
| 4 | 19 | 2.15 |
| 5 | 20 | 2.60 |

6 Eligible experience rated employers shall be assigned
7 to rate categories from highest to lowest according to their
8 experience reserve ratio with category one being assigned to
9 accounts with the highest reserve ratios and category twenty being
10 assigned to accounts with the lowest reserve ratios. Each category
11 shall be limited to no more than five percent of the state's total
12 taxable payroll, except that:

13 (i) Any employer which has a portion of its taxable wages
14 fall into one category and a portion into the next higher category
15 shall be assigned to the lower category;

16 (ii) No employer with a reserve ratio calculated to five
17 decimal places equal to another employer similarly calculated shall
18 be assigned to a higher rate than the employer to which it has the
19 equal reserve ratio; and

20 (iii) No employer with a positive experience account
21 balance shall be assigned to category twenty.

22 (f) The state's reserve ratio shall be calculated by
23 dividing the amount available to pay benefits in the Unemployment
24 Trust Fund and the State Unemployment Insurance Trust Fund as of

1 September 30, 2005, and each September 30 thereafter, less any
 2 outstanding obligations and amounts appropriated therefrom by the
 3 state's total wages from the four calendar quarters ending on
 4 such September 30. For purposes of this section, total wages means
 5 all remuneration paid by an employer in employment. The state's
 6 reserve ratio shall be applied to the table in this subdivision to
 7 determine the yield factor for the upcoming rate year.

| 8 State's Reserve Ratio | Yield Factor |
|--|--------------|
| 9 1.45 percent and above | = 0.70 |
| 10 1.30 percent up to but not including 1.45 | = 0.75 |
| 11 1.15 percent up to but not including 1.30 | = 0.80 |
| 12 1.00 percent up to but not including 1.15 | = 0.90 |
| 13 0.85 percent up to but not including 1.00 | = 1.00 |
| 14 0.70 percent up to but not including 0.85 | = 1.10 |
| 15 0.60 percent up to but not including 0.70 | = 1.20 |
| 16 0.50 percent up to but not including 0.60 | = 1.25 |
| 17 0.45 percent up to but not including 0.50 | = 1.30 |
| 18 0.40 percent up to but not including 0.45 | = 1.35 |
| 19 0.35 percent up to but not including 0.40 | = 1.40 |
| 20 0.30 percent up to but not including 0.35 | = 1.45 |
| 21 Below 0.30 percent | = 1.50 |

22 Once the yield factor for the upcoming rate year has
 23 been determined, it is multiplied by the amount of unemployment
 24 benefits paid from combined tax during the four calendar quarters
 25 ending September 30 of the preceding year. The resulting figure is

1 the planned yield for the rate year. The planned yield is divided
2 by the total taxable wages for the four calendar quarters ending
3 September 30 of the previous year and carried to four decimal
4 places to create the average combined tax rate for the rate year.

5 (g) The average combined tax rate is assigned to rate
6 category twelve as established in subdivision (4)(e) of this
7 section. Rates for each of the remaining nineteen categories are
8 determined by multiplying the average combined tax rate by the
9 experience factor associated with each category and carried to
10 four decimal places. Employers who are delinquent in filing their
11 combined tax reports as of October 31 of any year shall be assigned
12 to category twenty for the following calendar year unless the
13 delinquency is corrected prior to December 31 of the year of rate
14 calculation.

15 (h) As used in this subdivision (4) of this section,
16 standard rate means the rate assigned to category twenty for
17 that year. For calendar years 2006 and thereafter, the standard
18 rate shall be not less than five and four-tenths percent of the
19 employer's annual taxable payroll;

20 (5) Any employer may at any time make voluntary
21 contributions up to the amount necessary to qualify for one rate
22 category reduction, additional to the required contributions,
23 to the fund to be credited to his or her account. Voluntary
24 contributions received after March 10, 2005, for rate year 2005 or
25 January 10 for rate year 2006 and thereafter shall not be used in

1 rate calculations for the same calendar year;

2 (6) As used in sections 48-648 to 48-654, the term
3 payroll means the total amount of wages during a calendar year,
4 except as otherwise provided in section 48-654, by which the
5 combined tax was measured; and

6 (7)(a) The state or any of its instrumentalities shall
7 make payments in lieu of contributions in an amount equal to
8 the full amount of regular benefits plus one-half of the amount
9 of extended benefits paid during each calendar quarter that is
10 attributable to service in employment of the state or any of its
11 instrumentalities. The commissioner after the end of each calendar
12 quarter shall notify any state instrumentality or other public
13 employer of the amount of regular benefits and one-half the amount
14 of extended benefits paid that are attributable to service in its
15 employment and the instrumentality or public employer so notified
16 shall reimburse the fund within thirty days after receipt of such
17 notice. For all tax years beginning before January 1, 2010, the
18 commissioner may require that any employer whose annual payroll
19 for either of the two preceding calendar years has equaled or
20 exceeded five hundred thousand dollars to pay the reimbursement
21 by an electronic method approved by the commissioner, except when
22 the employer establishes to the satisfaction of the commissioner
23 that payment of the reimbursement by an electronic method would
24 work a hardship on the employer. For all tax years beginning on or
25 after January 1, 2010, the commissioner may require any employer

1 whose annual payroll for either of the two preceding calendar years
2 has equaled or exceeded one hundred thousand dollars to pay the
3 reimbursement by an electronic method approved by the commissioner,
4 except when the employer establishes to the satisfaction of the
5 commissioner that payment of the reimbursement by an electronic
6 method would work a hardship on the employer.

7 (b) After December 31, 1977, the state or any of its
8 political subdivisions and any instrumentality of one or more of
9 the foregoing or any other governmental entity for which services
10 in employment as is provided by subdivision (4)(a) of section
11 48-604 are performed shall be required to pay contributions and
12 after December 31, 1996, combined tax on wages paid for services
13 rendered in its or their employment on the same basis as any
14 other employer who is liable for the payment of combined tax under
15 the Employment Security Law, unless the state or any political
16 subdivision thereof and any instrumentality of one or more of the
17 foregoing or any other governmental entity for which such services
18 are performed files with the commissioner its written election not
19 later than January 31, 1978, or if such employer becomes subject
20 to this section after January 1, 1978, not later than thirty
21 days after such subjectivity begins, to become liable to make
22 payments in lieu of contributions in an amount equal to the full
23 amount of regular benefits plus one-half of the amount of extended
24 benefits paid during each calendar quarter that is attributable to
25 service in employment of such electing employer prior to December

1 31, 1978, and in an amount equal to the full amount of regular
2 benefits plus the full amount of extended benefits paid during each
3 calendar quarter that is attributable to service in employment of
4 such electing employer after January 1, 1979. Eligible employers
5 electing to make payments in lieu of contributions shall not
6 be liable for state unemployment insurance tax payments. The
7 commissioner, after the end of each calendar quarter, shall notify
8 any such employer that has so elected of the amount of benefits for
9 which it is liable to pay pursuant to its election that have been
10 paid that are attributable to service in its employment and the
11 employer so notified shall reimburse the fund within thirty days
12 after receipt of such notice.

13 (c) Any employer which makes an election in accordance
14 with subdivision (b) of this subdivision to become liable for
15 payments in lieu of contributions shall continue to be liable for
16 payments in lieu of contributions for all benefits paid based upon
17 wages paid for service in employment of such employer while such
18 election is effective and such election shall continue until such
19 employer files with the commissioner, not later than December 1
20 of any calendar year, a written notice terminating its election
21 as of December 31 of that year and thereafter such employer shall
22 again be liable for the payment of contributions and for the
23 reimbursement of such benefits as may be paid based upon wages paid
24 for services in employment of such employer while such election was
25 effective.

LB 1086

LB 1086

1 Sec. 2. Original section 48-649, Revised Statutes
2 Supplement, 2009, is repealed.