



House of Representatives

General Assembly

File No. 334

February Session, 2014

Substitute House Bill No. 5069

House of Representatives, April 3, 2014

The Committee on Labor and Public Employees reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING LOW WAGE EMPLOYERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) As used in this section
2 and section 2 of this act:

3 (1) "Person" has the same meaning as provided in section 42-133e of
4 the general statutes, except "person" shall not include the state or any
5 department, agency or political subdivision thereof;

6 (2) "Franchise" has the same meaning as provided in section 42-133e
7 of the general statutes;

8 (3) "Franchisor" has the same meaning as provided in section 42-
9 133e of the general statutes;

10 (4) "Franchisee" has the same meaning as provided in section 42-
11 133e of the general statutes;

12 (5) "Employee" means any individual employed or permitted to
13 work by an employer, but does not include any individual employed
14 in any park, camp or resort which is open not more than six months of
15 the year;

16 (6) "Covered employer" means:

17 (A) Any person, firm, business, educational institution, corporation,
18 limited liability company or other entity that directly employs five
19 hundred or more employees in the state in any one quarter in the
20 previous year, which shall be determined on January first, annually.
21 Such determination shall be made based upon the wage information
22 submitted to the Labor Commissioner pursuant to subsection (j) of
23 section 31-225a of the general statutes; or

24 (B) Any franchisor whose franchisees, collectively, employ at least
25 five hundred or more employees in the state in any one quarter in the
26 previous year, which shall be determined on January fifteenth,
27 annually. Such determination shall be made based upon the
28 information submitted to the Labor Commissioner pursuant to section
29 2 of this act; and

30 (7) "Covered employer" does not include any private nonprofit
31 entity, the state or any instrumentality or political subdivision thereof.

32 (b) Any covered employer that employs, or whose franchisee
33 employs, any employee (1) who was listed on such covered employer's
34 or such franchisee's payroll for at least ninety calendar days prior to
35 the completion of the most recent calendar quarter, and (2) whose
36 wages paid by such covered employer, or such covered employer's
37 franchisee, during such quarter were less than or equal to one hundred
38 thirty per cent of the minimum fair wage, as described in section 31-58
39 of the general statutes, shall pay a fee to the Labor Commissioner for
40 each such employee. Such fee shall be assessed quarterly and shall be
41 equal to one dollar for each hour such employee worked for such
42 covered employer during the previous quarter. Such fee shall not
43 accrue until January 1, 2015.

44 (c) The commissioner shall collect such fees from each covered
45 employer not later than sixty days after the completion of the quarter
46 in which such fees were assessed. The commissioner shall deposit such
47 revenue derived therefrom with the State Treasurer who shall deposit
48 such revenue in the General Fund.

49 (d) On or before October 1, 2014, the Labor Commissioner shall
50 adopt guidelines for the determination of and collection of fees
51 pursuant to subsections (b) and (c) of this section.

52 (e) Any covered employer aggrieved by the Labor Commissioner's
53 determination of fees pursuant to subsection (b) of this section may file
54 a complaint with the commissioner. Upon receipt of the complaint, the
55 commissioner shall investigate such complaint and may hold a
56 hearing. After the hearing, the commissioner shall send the covered
57 employer a written copy of his or her decision. Any covered employer
58 who prevails in such hearing shall be awarded reasonable attorney's
59 fees and costs. Any covered employer aggrieved by the decision of the
60 commissioner may appeal the decision to the Superior Court in
61 accordance with the provisions of chapter 54 of the general statutes.

62 (f) A covered employer shall not designate, or cause such covered
63 employee's franchisee to designate, an employee as an independent
64 contractor or temporary employee, reduce an employee's hours of
65 work or terminate an employee for the purpose of avoiding such
66 covered employer's obligations under this section.

67 (g) The Labor Commissioner may request the Attorney General to
68 investigate any violation of subsection (b) or (f) of this section. Any
69 information obtained pursuant to such investigation shall be exempt
70 from disclosure under section 1-210 of the general statutes. If the
71 Attorney General finds that a covered employer has violated or is
72 violating any provision of subsection (b) or (f) of this section, the
73 Attorney General may bring a civil action in the superior court for the
74 judicial district of Hartford in the name of the state against such
75 covered employer.

76 (h) If any provision of this section or its application to any person or
 77 circumstance is held invalid by a court of competent jurisdiction, the
 78 invalidity does not affect other provisions or applications of this
 79 section that can be given effect without the invalid provision or
 80 application, and to this end the provisions of this section are severable.

81 (i) Nothing in this section shall be construed to preempt or override
 82 the terms of any collective bargaining agreement effective prior to
 83 January 1, 2015.

84 Sec. 2. (NEW) (*Effective from passage*) Not later than January 1, 2015,
 85 and annually thereafter, each employer that submits wage information
 86 to the Labor Commissioner pursuant to subsection (j) of section 31-
 87 225a of the general statutes shall indicate to the commissioner, on a
 88 form and in a manner prescribed by the commissioner, whether such
 89 employer is a franchisee, and if so, such employer shall provide to the
 90 commissioner the name and address of the franchisor that granted the
 91 franchise to such employer, and any other information as the
 92 commissioner may prescribe.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section

LAB *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Labor Dept.	GF - Potential Revenue Gain	Up to 104.7 million	Up to 222.0 million
Labor Dept.	GF - Cost	11.0 million	14.6 million
State Comptroller - Fringe Benefits ¹	GF - Cost	3.0 million	4.0 million

Municipal Impact: None

Explanation

The bill establishes a quarterly fee on certain employers at the rate of \$1.00 per work hour for each employee paid less than 130% of the state minimum wage. This results in a potential revenue gain of up to \$104.7 million in FY 15 and up to \$222.0 million in FY 16. This also results in a cost of approximately \$14.0 million in FY 15 and approximately \$18.6 million annually thereafter to the Department of Labor (DOL).

COST IMPACT

The bill requires the Labor Commissioner to adopt guidelines for determining and collecting fees by October 1, 2014, and to begin collecting fees no later than 60 days after the close of the quarter for which they are assessed. Administration of this program is estimated to result in a cost of approximately \$18.6 million annually, including collections, data management, audit and all associated fringe benefit

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.66% of payroll in FY 15 and FY 16.

costs. The estimate is based on the current cost of agency management services under the unemployment insurance system.

The bill allows covered employers to file a complaint with the Labor Commissioner, who must investigate and hold a hearing. This is anticipated to result in a cost of approximately \$307,485 in FY 15 and \$409,980 annually thereafter for salary (\$75,000) and fringes (\$27,495) associated with the hiring of four Staff Attorneys.

Additionally, the bill allows the Labor Commissioner to request that the Office of the Attorney General (OAG) investigate certain violations. The OAG already has authority over wage violations. The bill is not anticipated to have a fiscal impact on OAG because it is not expected to lead to a higher rate of violations of wage and hour laws.

There is no impact to the Judicial Department from OAG to bring a civil suit to the Superior Court. The number of appeals is not anticipated to be great enough to need additional resources. The court system disposes of over 400,000 cases annually.

REVENUE IMPACT

The revenue estimate assumes approximately 100,675 of the 771,492 employees who work for firms with at least 500 employees would be covered under the bill. Additionally, the estimate assumes that the average annual hours worked per covered employee is approximately 2,080, based on hourly and annual wage data by job category and percentile compiled by DOL. Under the bill, it is uncertain how certain types of income (overtime, bonus, etc.) would be treated. Consequently, no adjustments are made to account for how this income would be treated. Additionally, the estimate assumes no behavior change on the part of employers or employees.

The Out Years

The annualized ongoing cost impact identified above would continue into the future subject to inflation. The potential revenue gain described above would increase to \$245.3 million in FY 17 and

continue into the future subject to inflation.

*Sources: Department of Labor Labor Market Information
United States Census Bureau*

OLR Bill Analysis

sHB 5069

AN ACT CONCERNING LOW WAGE EMPLOYERS.

SUMMARY:

Starting January 1, 2015, this bill assesses a quarterly fee on (1) employers with 500 or more employees and (2) franchisors whose franchisees collectively employ 500 or more employees. These employers and franchisors (“covered employers”) must pay a \$1- per-work-hour fee for each person who was (1) on the employer’s payroll, or the payroll of one of the franchisor’s franchisees, for the last 90 days of the most recently completed calendar quarter and (2) paid wages by the employer or franchisee that were less than 130% of the state’s minimum wage.

The bill requires the labor commissioner to adopt guidelines by October 1, 2014 for determining and collecting the fees. The fees start to accrue on January 1, 2015. The labor commissioner must collect the fees within 60 days after the end of the quarter for which they are assessed (presumably by the labor commissioner) and deposit them with the treasurer for deposit in the General Fund.

Any covered employer aggrieved by the commissioner’s fee determination can file a complaint with the commissioner, who must investigate and may hold a hearing, after which, she must send the covered employer a written decision. If the covered employer prevails, it must be awarded reasonable attorney’s fees and costs. It can also appeal the commissioner’s decision to the Superior Court.

The bill also (1) prohibits covered employers from taking certain actions to avoid the fees; (2) allows the labor commissioner to ask the attorney general to investigate violations; (3) includes a severability clause so that if a court finds any provision invalid, the remaining

provisions are not affected; and (4) specifies that it does not preempt or override the terms of any collective bargaining agreement effective before January 1, 2015.

EFFECTIVE DATE: Upon passage

COVERED EMPLOYERS

Employers

An employer subject to the bill's provisions is (1) any person, firm, business, educational institution, corporation, limited liability company, or other entity that directly employed at least 500 employees in the state in any one of the previous calendar year's quarters. It does not include any private nonprofit entity, the state, or the state's instrumentalities and political subdivisions. The determination whether an employer is subject to the fees must be made (presumably by the labor commissioner) annually on January 1, based on the quarterly wage information employers submit for unemployment tax purposes.

Franchisors

The bill subjects franchisors to the bill's provisions if their franchisees collectively employed 500 or more employees in the state in any one of the previous year's quarters. A franchisor is an entity that grants a franchise to another entity, including the authority to use a trademark, trade name, service mark, or other identifying symbol or name under a franchise. A franchisee is the entity to which a franchise is granted by the franchisor.

By January 1, 2015, and annually thereafter, the bill requires employers submitting their quarterly wage reports for unemployment tax purposes to indicate, on a form and in a manner determined by the labor commissioner, if they are a franchisee, and if so, their franchisor's contact information and any other information the commissioner requests. The determination whether a franchisor is subject to the bill's provisions must be made annually on January 15 based on these responses.

In general, franchisors are not considered the employers of the employees who work in a franchise. Instead, because the franchisee who owns the franchise controls the hiring, firing, wage, and scheduling decisions for these workers, the franchisee is typically considered their employer under wage, unemployment, workers' compensation, and other labor-related laws. Thus, it is unclear whether a franchisor could be held financially liable for decisions over which it does not have control.

FEES

Under the bill, covered employers must pay a quarterly fee of \$1 per hour worked during the assessed quarter by each person who was (1) on the employer's or franchisee's payroll for the last 90 days of the most recently completed calendar quarter and (2) paid wages by the employer or franchisee that were not at least 130% of the state's minimum wage. (For 2015's scheduled \$9.15 minimum wage, this threshold will be \$11.90 per hour.) Employers do not have to pay the fee for employees at parks, camps, or resorts open less than six months a year.

OTHER PROVISIONS

Prohibited Actions and Attorney General Investigations

The bill prohibits covered employers from trying to avoid the fee by designating (or causing a franchisee to designate) an employee as an independent contractor or temporary employee, reducing an employee's work hours, or terminating an employee.

The labor commissioner can ask the attorney general to investigate a violation of this provision or a covered employer's failure to pay the required fee. Any information obtained in the investigation is exempt from public disclosure under the state's Freedom of Information Act. If the attorney general finds that a covered employer has violated or is violating the bill, he can bring a civil suit in Hartford Superior Court.

Severability

The bill specifies that, if a court finds any of the bill's provisions

invalid, its remaining provisions remain in effect if they can be implemented without the invalid provision.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 7 Nay 3 (03/18/2014)