



# HOUSE BILL No. 4745

April 25, 1995, Introduced by Reps. Kukuk, Bush, Goschka, Perricone and Munsell and referred to the Committee on Human Resources and Labor.

A bill to amend section 19 of Act No. 1 of the Public Acts of the Extra Session of 1936, entitled as amended "Michigan employment security act," as amended by Act No. 25 of the Public Acts of 1995, being section 421.19 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Section 19 of Act No. 1 of the Public Acts of  
2 the Extra Session of 1936, as amended by Act No. 25 of the Public  
3 Acts of 1995, being section 421.19 of the Michigan Compiled Laws,  
4 is amended to read as follows:

5 Sec. 19. (a) The commission shall determine the contribution  
6 rate of each contributing employer for each calendar year after  
7 1977 as follows:

8 (1) (i) Except as provided in paragraph (ii), an employer's  
9 rate shall be calculated as described in table A with respect to

1 wages paid by the employer in each calendar year for employment.  
2 If an employer's coverage is terminated under section 24, or at  
3 the conclusion of 8 or more consecutive calendar quarters during  
4 which the employer has not had workers in covered employment, and  
5 if the employer becomes liable for contributions, the employer  
6 shall be considered as newly liable for contributions for the  
7 purposes of table A or table B of this subsection.

8       (ii) To provide against the high risk of net loss to the  
9 fund in such cases, an employing unit which becomes newly liable  
10 for contributions under this act in a calendar year beginning on  
11 or after January 1, 1983 in which it employs in "employment", not  
12 necessarily simultaneously but in any 1 week 2 or more individu-  
13 als in the performance of 1 or more contracts or subcontracts for  
14 construction in the state of roads, bridges, highways, sewers,  
15 water mains, utilities, public buildings, factories, housing  
16 developments, or similar construction projects, shall be liable  
17 for contributions to that employer's account under this act for  
18 the first 4 years of operations in this state at a rate equal to  
19 the average rate paid by employers engaged in the construction  
20 business as determined by contractor type in the annual report  
21 published by the commission in the manner provided in table B.

22       (iii) For the calendar years 1983 and 1984, the contribution  
23 rate of a construction employer shall not exceed its 1982 contri-  
24 bution rate with respect to wages, paid by that employer, related  
25 to the execution of a fixed price construction contract which was  
26 entered into prior to January 1, 1983. Furthermore, such  
27 contribution rate shall be reduced, by the solvency tax rate

1 assessed against the employer under section 19a, for the year in  
2 which such solvency tax rate is applicable. Furthermore, not-  
3 withstanding section 44, the taxable wage limit, for calendar  
4 years 1983 and 1984, with respect to wages paid under such fixed  
5 price contract, shall be the maximum amount of remuneration paid  
6 within a calendar year by an employer subject to the federal  
7 unemployment tax act, 26 U.S.C. 3301 to 3311, to an individual  
8 with respect to employment as defined in that act which is  
9 subject to tax under that act during that year.

Table A		
Year of Contribution Liability	Contribution Rate	
1		2.7%
2		2.7%
3		1/3 (chargeable benefits component) + 1.8%
4		2/3 (chargeable benefits component) + 1.0%
5 and over		(chargeable benefits component) + (account building component) + (nonchargeable benefits component)
Table B		
Year of Contribution Liability	Contribution Rate	
1	average construction contractor rate as determined by the commission	
2	average construction contractor rate as determined by the commission	
3	1/3 (chargeable benefits component) + 2/3 average construction contractor rate as determined by the commission	
4	2/3 (chargeable benefits component) + 1/3 average construction contractor rate as determined by the commission	
5 and over	(chargeable benefits component) + (account building component) + (nonchargeable benefits component)	

(2) With the exception of employers who are in the first 4 consecutive years of liability, each employer's contribution rate for each calendar year after 1977 shall be the sum of the following components, all of which are determined as of the computation date: a chargeable benefits component determined under subdivision (3), an account building component determined under

1 subdivision (4), and a nonchargeable benefits component  
2 determined under subdivision (5). Each employer's contribution  
3 rate for calendar years before 1978 shall be determined by the  
4 provisions of this act in effect during the years in question.

5 (3) (i) The chargeable benefits component of an employer's  
6 contribution rate is the percentage determined by dividing: the  
7 total amount of benefits charged to the employer's experience  
8 account within the lesser of 50 consecutive months ending on the  
9 computation date or the number of consecutive months ending on  
10 the computation date with respect to which the employer has been  
11 continuously liable for contributions; by the amount of wages,  
12 subject to contributions, paid by the employer within the same  
13 period. If the resulting quotient is not an exact multiple of  
14  $\frac{1}{10}$  of 1%, it shall be increased to the next higher multiple of  
15  $\frac{1}{10}$  of 1%.

16 (ii) For benefit years established before the conversion  
17 date prescribed in section 75, the chargeable benefits component  
18 shall not exceed 6.0%, unless there is a statutory change in the  
19 maximum duration of regular benefit payments or the statutory  
20 ratio of regular benefit payments to credit weeks. In the event  
21 of a change in the maximum duration of regular benefit payments,  
22 the maximum chargeable benefits component shall increase by the  
23 same percentage as the statutory percentage change in the dura-  
24 tion of regular benefit payments between computation dates. In  
25 the event of an increase in the statutory ratio of regular bene-  
26 fit payments to credit weeks, as described in section 27(d), the  
27 maximum chargeable benefits component determined as of the

1 computation dates occurring after the effective date of the  
2 increased ratio shall increase by  $1/2$  the same percentage as the  
3 increase in the ratio of regular benefit payments to credit  
4 weeks. If the resulting increase is not already an exact multi-  
5 ple of  $1/10$  of 1%, it shall be adjusted to the next higher multi-  
6 ple of  $1/10$  of 1%. For benefit years established after the con-  
7 version date prescribed in section 75, the chargeable benefits  
8 component shall not exceed 6.0%, unless there is a statutory  
9 change in the maximum duration of regular benefit payments or the  
10 percentage factor of base period wages, which defines maximum  
11 duration, as provided in section 27(d). If there is a statutory  
12 change in the maximum duration of regular benefit payments, the  
13 maximum chargeable benefits component shall increase by the same  
14 percentage as the statutory percentage change in the duration of  
15 regular benefit payments between computation dates. If there is  
16 an increase in the statutory percentage factor of base period  
17 wages, as described in section 27(d), the maximum chargeable ben-  
18 efits component determined as of the computation dates occurring  
19 after the effective date of the increased ratio shall increase by  
20  $1/2$  the same percentage as the increase in the percentage factor  
21 of base period wages. If the resulting increase is not already  
22 an exact multiple of  $1/10$  of 1%, it shall be adjusted to the next  
23 higher multiple of  $1/10$  of 1%.

24 (4) The account building component of an employer's contri-  
25 bution rate is the percentage arrived at by the following  
26 calculations: (i) Multiply the amount of the employer's total  
27 payroll for the 12 months ending on the computation date, by the

1 cost criterion; (ii) Subtract the amount of the balance in the  
2 employer's experience account as of the computation date from the  
3 product determined under (i); and (iii) if the remainder is zero  
4 or a negative quantity, the account building component of the  
5 employer's contribution rate shall be zero; but (iv) if the  
6 remainder is a positive quantity, the account building component  
7 of the employer's contribution rate shall be determined by divid-  
8 ing that remainder by the employer's total payroll paid within  
9 the 12 months ending on the computation date. The account build-  
10 ing component shall not exceed the lesser of  $1/4$  of the percen-  
11 tage thus calculated or 2%. However, except as otherwise pro-  
12 vided in this subdivision, the account building component shall  
13 not exceed the lesser of  $1/2$  of the percentage thus calculated or  
14 3%, if on the June 30 of the preceding calendar year the balance  
15 in the unemployment compensation fund was less than 50% of an  
16 amount equal to the aggregate of all contributing employers'  
17 annual payrolls, for the 12 months ending March 31, times the  
18 cost criterion. For calendar years after 1993 and before 1996,  
19 the account building component shall not exceed the lesser of .69  
20 of the percentage calculated, or 3%, if on the June 30 of the  
21 preceding calendar year the balance in the unemployment compensa-  
22 tion fund was less than 50% of an amount equal to the aggregate  
23 of all contributing employers' annual payrolls, for the 12 months  
24 ending March 31, as defined in section 18(f), times the cost cri-  
25 terion; selected for the computation date under section 18(e).  
26 If the account building component determined under this

1 subdivision is not an exact multiple of  $1/10$  of 1%, it shall be  
2 adjusted to the next higher multiple of  $1/10$  of 1%.

3 (5) The nonchargeable benefits component of employers' con-  
4 tribution rates is the percentage arrived at by the following  
5 calculations: (i) multiply the aggregate amount of all contrib-  
6 uting employers' annual payrolls, for the 12 months ending March  
7 31, as defined in section 18(f), by the cost criterion selected  
8 for the computation date under section 18(e); (ii) subtract the  
9 balance of the unemployment fund on the computation date, net of  
10 federal advances, from the product determined under (i); and  
11 (iii) if the remainder is zero or a negative quantity, the non-  
12 chargeable benefits component of employers' contribution rates  
13 shall be zero; but (iv) if the remainder is a positive quantity,  
14 the nonchargeable benefits component of employers' contribution  
15 rates shall be determined by dividing that remainder by the total  
16 of wages subject to contributions under this act paid by all con-  
17 tributing employers within the 12 months ending on March 31 and  
18 adjusting the quotient, if not an exact multiple of  $1/10$  of 1%,  
19 to the next higher multiple of  $1/10$  of 1%. The maximum non-  
20 chargeable benefits component shall be 1%. However, for calendar  
21 years after 1993, ~~and before 1996,~~ if there are no benefit  
22 charges against an employer's account for the 60 months ending as  
23 of the computation date, OR IF THE EMPLOYER'S CHARGEABLE BENEFITS  
24 COMPONENT IS LESS THAN  $2/10$  OF 1%, the maximum nonchargeable ben-  
25 efit component shall not exceed  $1/2$  of 1%. For calendar years  
26 after 1995, if there are no benefit charges against an employer's  
27 account for the 72 months ending as of the computation date, ~~or~~

1 ~~if the employer's chargeable benefits component is less than 2/10~~  
2 ~~of 1% for that period,~~ the maximum nonchargeable benefits compo-  
3 nent shall not exceed 4/10 of 1%. For calendar years after 1996,  
4 if there are no benefit charges against an employer's account for  
5 the 84 months ending as of the computation date, ~~or if the~~  
6 ~~employer's chargeable benefits component is less than 2/10 of 1%~~  
7 ~~for that period,~~ the maximum nonchargeable benefits component  
8 shall not exceed 3/10 of 1%. For calendar years after 1997, if  
9 there are no benefit charges against an employer's account for  
10 the 96 months ending as of the computation date, ~~or if the~~  
11 ~~employer's chargeable benefits component is less than 2/10 of 1%~~  
12 ~~for that period,~~ the maximum nonchargeable benefits component  
13 shall not exceed 2/10 of 1%. For calendar years after 1998, if  
14 there are no benefit charges against an employer's account for  
15 the 108 months ending as of the computation date, ~~or if the~~  
16 ~~employer's chargeable benefits component is less than 2/10 of 1%~~  
17 ~~for that period,~~ the maximum nonchargeable benefits component  
18 shall not exceed 1/10 of 1%. An employer with a positive balance  
19 in its experience account on the June 30 computation date preced-  
20 ing the calendar year shall receive for that calendar year a  
21 credit in an amount equal to 1/2 of the extra federal unemploy-  
22 ment tax paid in the preceding calendar year under section  
23 3302(c)(2) of the federal unemployment tax act,  
24 26 U.S.C. 3302(c)(2), because of an outstanding balance of unre-  
25 paid advances from the federal government to the unemployment  
26 compensation fund under section 1201 of the social security act,  
27 42 U.S.C. 1321. However, the credit for any calendar year shall

1 not exceed an amount determined by multiplying the employer's  
2 nonchargeable benefit component for that calendar year times the  
3 employer's taxable payroll for that year. Contributions paid by  
4 an employer shall be credited to the employer's experience  
5 account, in accordance with the provisions of section 17(5),  
6 without regard to any credit given under this subsection. The  
7 amount credited to an employer's experience account shall be the  
8 amount of the employer's tax before deduction of the credit pro-  
9 vided in this subsection.

10 (6) The total of the chargeable benefits and account build-  
11 ing components of an employer's contribution rate shall not  
12 exceed by more than 1% in the 1983 calendar year, 1.5% in the  
13 calendar year 1984, or 2% in the 1985 calendar year the higher of  
14 4% or the total of the chargeable benefits and the account build-  
15 ing components which applied to the employer during the preceding  
16 calendar year. For calendar years after 1985, the total of the  
17 chargeable benefits and account building components of the  
18 employer's contribution rate shall be computed without regard to  
19 the foregoing limitation provided in this subdivision. During a  
20 year in which this subdivision limits an employer's contribution  
21 rate, the resulting reduction shall be considered to be entirely  
22 in the experience component of the employer's contribution rate,  
23 as defined in section 18(d).

24 (7) Unless an employer's contribution rate is 1/10 of 1% for  
25 calendar years beginning after December 31, 1995, the chargeable  
26 benefits component, the account building component, and the  
27 nonchargeable benefits component of the contribution rate

1 calculated under this section shall each be reduced by 10% or by  
2 deducting 1/10 of 1% from the contribution rate, whichever method  
3 results in the lower rate, for employers who have been liable for  
4 the payment of contributions in accordance with this act for more  
5 than 4 consecutive years, if the balance of money in the unem-  
6 ployment compensation fund established under section 26, exclud-  
7 ing money borrowed from the federal unemployment trust fund, is  
8 equal to or greater than 1.2% of the aggregate amount of all con-  
9 tributing employers' payrolls for the 12-month period ending on  
10 the computation date. If the employer's contribution rate is  
11 reduced by a 1/10 of 1% deduction in accordance with this subdi-  
12 vision, the employer's contributions shall be credited to each of  
13 the components of the contribution rate on a pro rata basis. As  
14 used in this subdivision:

15 (i) "Federal unemployment trust fund" means the fund created  
16 under section 904 of title IX of the social security act, 42  
17 U.S.C. 1104.

18 (ii) "Payroll" means that term as defined in section 18(f).

19 (b) An employer previously liable for contributions under  
20 this act which on or after January 1, 1978 filed a petition for  
21 arrangement under the bankruptcy act of 1898, chapter 541,  
22 30 Stat. 544, or on or after October 1, 1979 filed a petition for  
23 reorganization under title 11 of the United States code, entitled  
24 bankruptcy, 11 U.S.C. 101 to 1330 pursuant to which a plan of  
25 arrangement or reorganization for rehabilitation purposes has  
26 been confirmed by order of the United States bankruptcy court,  
27 shall be considered as a reorganized employer and shall have a

1 reserve fund balance of zero as of the first calendar year  
2 immediately following court confirmation of the plan of arrange-  
3 ment or reorganization, but not earlier than the calendar year  
4 beginning January 1, 1983, if the employer meets each of the fol-  
5 lowing requirements:

6 (1) An employer whose plan of arrangement or reorganization  
7 has been confirmed as of January 1, 1983 shall, within 60 days  
8 after January 1, 1983, notify the commission of its intention to  
9 elect the status of a reorganized employer. An employer which  
10 has not had a plan of arrangement or reorganization confirmed as  
11 of January 1, 1983 shall, within 60 days after the entry by the  
12 bankruptcy court of the order of confirmation of the plan of  
13 arrangement or reorganization, notify the commission of its  
14 intention to elect the status of a reorganized employer. An  
15 employer shall not make an election under this subdivision after  
16 December 31, 1985.

17 (2) The employer has paid to the commission all contribu-  
18 tions previously owed by the employer pursuant to this act for  
19 all calendar years prior to the calendar year as to which the  
20 employer elects to begin its status as a reorganized employer.

21 (3) More than 50% of the employer's total payroll is paid  
22 for services rendered in this state during the employer's fiscal  
23 year immediately preceding the date the employer notifies the  
24 fund administrator of its intention to elect the status of a  
25 reorganized employer.

26 (4) The employer, within 180 days after notifying the  
27 commission of its intention to elect the status of a reorganized

1 employer, makes a cash payment to the commission, for the  
 2 unemployment compensation fund, equal to: .20 times the first  
 3 \$2,000,000.00 of the employer's negative balance, .35 times the  
 4 amount of the employer's negative balance above \$2,000,000.00 and  
 5 up to \$5,000,000.00, and .50 times the amount of the negative  
 6 balance above \$5,000,000.00. The total amount so determined by  
 7 the commission shall be based on the employer's negative balance  
 8 existing as of the end of the calendar month immediately preced-  
 9 ing the calendar year in which the employer will begin its status  
 10 as a reorganized employer. If the employer fails to pay the  
 11 amount determined, within 180 days of electing status as a reor-  
 12 ganized employer, the commission shall reinstate the employer's  
 13 negative balance previously reduced and redetermine the  
 14 employer's rate on the basis of such reinstated negative  
 15 balance. Such redetermined rate shall then be used to redeter-  
 16 mine the employer's quarterly contributions for that calendar  
 17 year. Such redetermined contributions shall be subject to the  
 18 interest provisions of section 15 as of the date the redetermined  
 19 quarterly contributions were originally due.

20 (5) Except as provided in subdivision (6), the employer con-  
 21 tribution rates for a reorganized employer beginning with the  
 22 first calendar year of the employer's status as a reorganized  
 23 employer shall be as follows:

24

25 Year of Contribution 26 Liability	27 Contribution Rate
28 1	2.7% of total taxable wages paid

1                   2                   2.7%  
 2                   3                   2.7%  
 3                   4 and over           (chargeable benefits component based  
 4   upon 3-year experience) plus  
 5   (account building component based  
 6   upon 3-year experience) plus  
 7   (nonchargeable benefits component)  
 8           (6) To provide against the high risk of net loss to the fund

9 in such cases, any reorganized employer which employs in  
 10 "employment", not necessarily simultaneously but in any 1 week 25  
 11 or more individuals in the performance of 1 or more contracts or  
 12 subcontracts for construction in the state of roads, bridges,  
 13 highways, sewers, water mains, utilities, public buildings, fac-  
 14 tories, housing developments, or similar major construction  
 15 projects, shall be liable beginning the first calendar year of  
 16 the employer's status as a reorganized employer for contribution  
 17 rates as follows:

18 \_\_\_\_\_

19	Year of Contribution	Contribution Rate
20	Liability	
21		
22	1	average construction contractor rate as determined by the commission
23		
24	2	average construction contractor rate as determined by the commission
25		
26	3	1/3 (chargeable benefits component) + 2/3 average construction contractor rate as determined by the commission
27		
28	4	2/3 (chargeable benefits component) + 1/3 average construction contractor rate as determined by the commission
29		
30	5 and over	(chargeable benefits component) + (account building component) + (nonchargeable benefits component)
31		
32		
33		
34		
35		
36		
37		

37           (c) Upon application by an employer to the commission for  
 38 designation as a distressed employer, the commission, within  
 39 60 days after receipt of the application, shall make a

1 determination whether the employer meets the conditions set forth  
2 in this subsection. Upon finding that the conditions are met,  
3 the commission shall notify the legislature of the determination  
4 and request legislative acquiescence in the determination. If  
5 the legislature approves the determination by concurrent resolu-  
6 tion, the employer shall be considered to be a "distressed  
7 employer" as of January 1 of the year in which the determination  
8 is made. The commission shall notify the employer of such deter-  
9 mination and notify the employer of its contribution rate as a  
10 distressed employer and the contribution rate that would apply if  
11 the employer was not a distressed employer. The distressed  
12 employer shall determine its tax contribution using the 2 rates  
13 furnished by the commission and shall pay its tax contribution  
14 based on the lower of the 2 rates. If the determination of dis-  
15 tressed employer status is made during the calendar year, the  
16 employer shall be entitled to a credit on future quarterly  
17 installments for any excess contributions paid during that ini-  
18 tial calendar year. The employer shall notify the commission of  
19 the difference between the amount paid and the amount which would  
20 have been paid if the employer were not determined to be a dis-  
21 tressed employer and the difference will be owed to the unemploy-  
22 ment compensation fund, payable in accordance with this  
23 subsection. Cumulative totals of the difference must be reported  
24 to the commission with each return required to be filed. The  
25 commission may periodically determine continued eligibility of an  
26 employer under this subsection. When the commission makes a  
27 determination that an employer no longer qualifies as a

1 distressed employer, the commission shall notify the employer of  
2 that determination. After notice by the commission that the  
3 employer no longer qualifies as a distressed employer, the  
4 employer will be liable for contributions, beginning with the  
5 first quarter occurring after receipt of notification of disqual-  
6 ification, on the basis of the rate that would apply if the  
7 employer was not a distressed employer. The contribution rate  
8 for a distressed employer shall be calculated under the law in  
9 effect for the 1982 calendar year except that the rate thus  
10 determined shall be reduced by the applicable solvency tax rate  
11 assessed against the employer under section 19a. The taxable  
12 wage limit of such distressed employer for the 1983, 1984, and  
13 1985 calendar years shall be the maximum amount of remuneration  
14 paid within a calendar year by such an employer subject to the  
15 federal unemployment tax act, 26 U.S.C. 3301 to 3311, to an indi-  
16 vidual with respect to employment as defined in that act which is  
17 subject to tax under that act during that year. Commencing with  
18 the fourth quarter of 1986, the distressed employer will pay in  
19 10 equal annual installments the amount of the unpaid contribu-  
20 tions owed to the unemployment compensation fund due to the  
21 application of this subsection, without interest. Each install-  
22 ment shall be made with the fourth quarterly return for the  
23 respective year. As used in this subsection, "distressed  
24 employer" means an employer whose continued presence in this  
25 state is considered essential to the state's economic well-being  
26 and who meets the following criteria:

1 (1) The employer's average annual Michigan payroll in the 5  
2 previous years exceeded \$500,000,000.00.

3 (2) The employer's average quarterly number of employees in  
4 Michigan in the 5 previous years exceeded 25,000.

5 (3) The employer's business income as defined in section 3  
6 of Act No. 228 of the Public Acts of 1975, being section 208.3 of  
7 the Michigan Compiled Laws, has resulted in an aggregate loss of  
8 \$1,000,000,000.00 or more during the 5-year period ending in the  
9 second year prior to the year for which the application is being  
10 made.

11 (4) The employer has received from the state of Michigan  
12 loans totaling \$50,000,000.00 or more or loan guarantees from the  
13 federal government in excess of \$500,000,000.00, either of which  
14 are still outstanding.

15 (5) Failure to give an employer designation as a distressed  
16 employer would adversely impair the employer's ability to repay  
17 the outstanding loans owed to the state of Michigan or which are  
18 guaranteed by the federal government.

19 (d) An employer may at any time make payments to that  
20 employer's experience account in the fund in excess of the  
21 requirements of this section, but these payments, when accepted  
22 by the commission, shall be irrevocable. A payment made by an  
23 employer within 30 days after mailing to the employer by the com-  
24 mission of a notice of the adjusted contribution rate of the  
25 employer shall be credited to the employer's account as of the  
26 computation date for which the adjusted contribution rate was  
27 computed, and the employer's contribution rate shall be further

1 adjusted accordingly. However, a payment made more than 120 days  
2 after the beginning of a calendar year shall not affect the  
3 employer's contribution rate for that year.