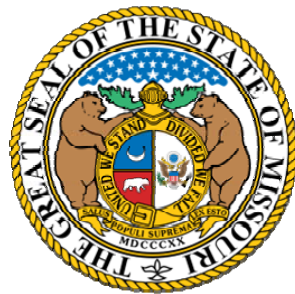

UNEMPLOYMENT COMPENSATION FINANCING
AS A LONG-TERM AND SHORT-TERM LEGISLATIVE ISSUE
FOR THE CONSTRUCTION INDUSTRY
An Overview For Understanding The System And The Issues



*AGC of Missouri Legislative Day
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Presented by Jack Atterberry*

PURPOSE:

- To provide a basic understanding of how the federal and state unemployment system works.
 - *Federal and state unemployment compensation laws are very complex and attempts to briefly summarize risk oversimplification and inaccuracy. However, information herein is a basic explanation of how the system works and the legislative issues involved.*
 - Does not provide information about the claims or appeals process.
 - *If you need help AGC can provide information or put you in touch with persons with the expertise with claims to answer your questions.*
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THE BASICS – FEDERAL (FUTA) AND STATE (SUTA)

FEDERAL UNEMPLOYMENT TRUST FUND ACT (FUTA)

- FUTA was established by Title IV of the federal Social Security Act. The federal program dates back to 1938.
- Federal employer contributions are collected through the Internal Revenue Service (Form 940) and used for three purposes:
 - 1) Funds state workforce agencies, such as the Division of Employment Security under the Missouri Department of Labor and Industrial Relations.
 - 2) Pays one-half of the costs of extended unemployment benefits during periods of high unemployment. (Note: In the current recession 100% of extended benefits have been federally funded.)
 - 3) Provides a fund from which states may borrow, if necessary, to pay state benefits.

(Source: Missouri Department of Labor and Industrial Relations, Unemployment Compensation Trust Fund Questions and Answers; AGC of Missouri, Legislative Policy Positions, December, 2002; US Department of Labor, Employment and Training Administration, Unemployment Insurance Tax Topic, 11/19/09)

STATE UNEMPLOYMENT TRUST FUND ACT (SUTA)

- The Missouri Employment Security Law, including unemployment compensation provisions, dates back to 1951.
- Since states are required to have an unemployment compensation program by federal law, much of Missouri's program is dictated by federal law and regulations.
- The Missouri General Assembly determines by state statute many aspects of Missouri's program including level and eligibility for benefits and methods of funding. However, states must maintain "conformity" or risk losing federal funds.
- SUTA funds are used exclusively to pay regular state employee benefits, unless other uses are authorized by state legislation and allowable under federal law.

(Source: AGC of Missouri, Legislative Policy Positions, December 2002; US Department of Labor Employment and Training Administration, Unemployment and Insurance Tax Topic, 11/19/09)

EMPLOYER TAXES

FUTA

- The FUTA tax rate is 6.2% of a Taxable Wage Base (TWB) set at a maximum of \$7,000 per employee.
- However, employers receive an offset credit of up to 5.4% for paying state unemployment taxes on a timely basis regardless of the state rate of tax.
- Therefore the net FUTA tax rate is usually 0.8% based on a \$7,000 TWB, which works out to \$56 per employee annually.
- Employers also pay a federal surtax to finance extended benefits during periods of high unemployment. Currently employers are paying a 0.2% FUTA Surtax through June 2011 as a result of extended benefits.

(Source: US Department of Labor Employment and Training Administration, Unemployment Insurance Tax Topic, 11/19/09; Missouri Department of Labor and Industrial Relations, Labor Link, November 2009; Missouri Chamber of Commerce, Missouri Chamber Direct, 11/9/09)

EMPLOYER TAXES

SUTA

- Current Missouri law, as enacted by HB 1268 in 2004 and effective on January 1, 2005, sets state taxes based on:

Taxable Wage Base (The maximum amount of wages for each employee on which an employer must pay contributions.)

2010 \$13,000

(Phased in from \$11,000 beginning 1/1/05. Previously \$8,000.)

Tax Rate (This rate is the employer's company specific tax rate based on the employer's individual experience in use of the Fund, up to a statutory maximum)

2010 7.5% Maximum (Previously 6% before 1/1/05)

- ***Being "maximum rated" depends on number of years employer has previously been at the maximum rate, phased in from 6.25% effective January 1, 2005.***
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Contribution Rate Adjustment (CRA) (This is the percentage added to the employer's tax rate depending upon the SUTA Trust Fund balance.)

Maximum: 30% (if SUTA balance is less than \$350 million.)

“Maximum Rated Deficit Employers” (Includes many construction contractors due to seasonal work).

- Through 2007 “Maximum Rated Deficit Employers” were subject to an additional 10% tax rate adjustment making their CRA 40%.
- Since the Trust Fund balance has been -0- since March 2009, employers in this classification can expect to continue to pay the maximum tax rate until the Fund becomes solvent.

(Source: AGC of Missouri, Friday Facts, 5/21/04; Section 288.036.2 RSMo; Missouri Department of Labor and Industrial Relations, Missouri Unemployment Trust Fund Projection, US Department of Labor Benefit Financing Model, 7/26/09)

TITLE XII BORROWING

- The Federal Unemployment Tax Act requires states to pay benefits even if their SUTA Fund is insolvent.
 - States may borrow from the FUTA Fund established for that purpose under Title XII of the Act.
 - Interest on money owed on federal borrowing is assessed to individual employers on a pro-rata basis in June of each year.
 - Missouri ***began borrowing*** in the current recession under Title XII in ***March 2009***.
 - As of January 28, 2010 Missouri has an ***outstanding loan balance of \$543.1 million***.
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- **More than half the states have borrowed to pay benefits. Many states have much larger loan balances:**

	XII Loan Balance
California	\$6.9 Billion
Michigan	\$3.4 Billion
New York	\$2.5 Billion
Florida, Illinois, Indiana, New Jersey and Texas	All Above \$1 Billion

- ***Forty states*** are expected to have borrowed ***by December 31, 2010.***
- The “American Recovery and Reinvestment Act of 2009” (ARRA) provides for interest free Title XII loans to the states through December 31, 2010.
- About July 1, 2009, US DOL published a rule establishing criteria for states to continue to receive “interest free” Title XII loans.
- Missouri may not continue to qualify for interest-free loans.

(Sources: AGC of Missouri, Friday Facts, 3/20/09; Unemployment Work Comp Council (UWC), State Unemployment Compensation Advisory Program, January 2010; Doug Hughes, UWC, 2/26/10; Missouri Department of Labor and Industrial Relations: Memo, 7/7/09; Federal Register, 20 CFR Part 606, 6/25/09)

TITLE XII LOANS / LOSS OF FUTA CREDIT

- Employers in states that failed to meet repayment requirements under federal borrowing are subject to **.3% credit reduction** in their 5.4% offset against federal taxes for paying state unemployment taxes.
- An **additional .3%** credit reduction is assessed on a **progressive annual basis** up to 1.2% after five years if the state continues to fail to meet repayment requirements.
- The assessment of whether repayment standards have been met is made in November each year based on specified criteria and the reduction assessed January 1 of the following year.
- States losing .3% “FUTA Credits”:
 - 2009: Michigan
 - 2010: Michigan, Indiana, South Carolina
 - 2011: Twenty-five states total

(Sources: Missouri Department of Labor and Industrial Relations, Unemployment Compensation Trust Fund Questions and Answers; AGC of Missouri, Summary of Deficit and CFR Provisions Impacting Employer Loss of Tax Credit Due to Missouri Insolvency, 3/26/03; UWC, Doug Hughes, 2/26/10)

SUTA FUND INSOLVENCY AS A LEGISLATIVE ISSUE

SHORT TERM OPTIONS

1) Title XII Loans

- Must repay interest, if interest free borrowing is not renewed by the US Congress by 12/31/10 or Missouri does not meet criteria for interest free loans.
 - Missouri has borrowed under Title XII during several prior recessions and has never lost employer “FUTA Tax Credits”:
 - Past borrowing includes recession of 2001, with borrowing beginning in March 2003 and extending through 2006.
 - ***Current recession is much worse:***
 - Some predict Missouri will borrow as much as \$2.6 billion.
 - Will Missouri employers lose “FUTA Credits” for the first time?
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2) *State Private Bond Financing*

- Utilize Missouri's authority for private bond financing as an alternative to borrowing from the federal government.
 - Authorized in HB 1268 (2004) passed by the Missouri General Assembly.
 - In 2006 state UC bonds were capped at \$450 million at any one time.
 - HB 1075 enacted by the General Assembly in 2009 removed the bonding cap.
- **Missouri *Board of Unemployment Fund Financing*** ("BUFF Board") may authorize issuance of state bonds to pay benefits or to repay past Title XII loans.
 - ***The Board is made up of the Governor, Lt. Governor, Attorney General, Director of the Department of Labor and the Commissioner of Administration.***
- An investment banker advised in December 2009 that a tax exempt or taxable bond could currently be obtained at low rates and would not endanger Missouri's AAA bond rating.

(Sources: AGC of Missouri, Friday Facts, 2/13/04, 5/21/04, 5/26/06; Unemployment Work Comp Council (UWC), State Unemployment Compensation Advisory Program, January 2010; Section 288.330 RSMo; Missouri Chamber of Commerce, Chamber Direct, 11/9/09)

STATE FUND INSOLVENCY AS A LEGISLATIVE ISSUE

LONG TERM

- ***Obviously there is some pain ahead for Missouri employers to make the Missouri SUTA Fund solvent.***
 - **NO ONE** (Governor or General Assembly) is talking about a tax increase during the current recession.
 - Eventually that issue must be addressed.
 - ***Options***
 - Increase Employer Contributions
 - TWB
 - Tax Rate and CRA
 - Zero Rated Employers (Some employers pay nothing into the Fund.)
 - Pool Charges (Charges shared by all employers because they are not charged to a specific employer's experience.)
 - Benefit Reforms
 - 2004, 2006 and 2009 Legislation have enacted provisions disallowing benefits related to
 - Drug Testing
 - Misconduct
 - Tardiness and Absenteeism
 - Further reforms (?)
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LONG TERM – CONSTRUCTION INDUSTRY ISSUES

- Why should AGC and the Construction Industry care how the long-term unemployment comp issue is resolved?
 - **“Maximum Rated Deficit Employers”**
 - **Construction** - #1 by total number of deficit employers (3,991)* and total deficit. (\$177.4 Million)*
 - “Maximum Rated Deficit” (\$158.2 Million)*
 - **Manufacturing** - #2 by total number of deficit employers (784)*. However, total deficit (\$189.9 Million) and total “Maximum Rated Deficit” (\$177.9 Million) exceed construction.
 - **“Double Whammy”**
 - Raising the TWB and Tax Rate or CRA is a “double whammy” to construction.
 - Construction provides high paying jobs, so most contractors are paying up to the maximum TWB.
 - Due to being “maximum rated” tax rate increases impact construction more than most industries.

* 3/10/08 Data (latest available from Division of Employment Security.)

ACTUAL INCREASES – HB 1268 (2004)

AGC obtained data from five member companies:
Costs Projected from HB 1268 (2005 – 2009)

	2003				2005-2009
Company	# Employees	Wages	Tax Rate	UC Tax	Total Increase
A	81	\$2.6 M	7.8%	\$44,667	\$46,739 (104.6%)
B	222	\$6 M	7.8%	\$104,012	\$66,613 (64%)
C	125	\$1 M	7.8%	\$78,000	\$68,250 (87.5%)
D	251	\$7 M	7.8%	\$102,613	\$77,762 (75.8%)
E	99	\$2.7 M	2.4%	\$15,958	\$12,138 (76.1%)

Drastic UC employer tax increases impact contractor's bottom-line.

WHAT CAN YOU DO?

- What can AGC/MO members do to help?
 - ***Resource to AGC of Missouri***
 - Have your CFO or other company official responsible for tax issues help AGC evaluate future legislative proposals.
 - ***Reduce Your Company's Experience***
 - To the extent possible, managing your own company's "experience" (employee use of benefits) reduces your and the industry's potential future tax burdens.
 - ***AGC of Missouri can put you in touch with companies that help employers manage their UC tax burden.***
 - ***Challenge Unjustified Claims***
 - Sometimes it is easier to let a "voluntary quit" or person discharged for "misconduct" draw against the system rather than fighting the claim. Fraudulent claims drive up your tax rate and contribute to future tax increases.
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