COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2179H.01I
Bill No.: HB 1035
Subject: Labor and Management; Unemployment Compensation; Employment Security; Employees - Employers; Federal - State Relations; Emergencies; Labor and Industrial Relations, Department of
Type: Original
Date: February 10, 2021

Bill Summary: The proposal requires the Department of Labor and Industrial Relations to waive non-fraudulent overpayments of federally supported unemployment benefits.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on General Revenue	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on Other State Funds	**$0**	**$0**	**$0**

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Unemployment Insurance Trust Fund	(Unknown)	(Unknown)	(Unknown)
Unemployment Insurance Administrative Fund	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on All Federal Funds	**(Unknown)**	**(Unknown)**	**(Unknown)**

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on FTE	**0**	**0**	**0**

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed $250,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Government	**$0**	**$0**	**$0**

FISCAL ANALYSIS

ASSUMPTION

***Oversight** was unable to verify some of the agency responses in a timely manner due to the short fiscal note request time. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval to publish a new fiscal note.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state the prohibits the Division of Employment Security (DES) from attempting to collect unemployment insurance (UI) benefits incorrectly distributed for reasons other than claimant fraud.

Violation of Federal Agreement:

In March of 2020, the State of Missouri signed an agreement with the United States Department of Labor (USDOL) in which Missouri agreed to collect overpayment of federal funds. In exchange, Missouri became eligible for receipt of funds under the federal CARES Act. A statutory provision in state law prohibiting the recovery or attempted recovery of such funds would violate this agreement. If the agreement were to be violated, penalties by the USDOL could include a refusal to allow Missouri to participate in future payments of Federal Pandemic Unemployment Compensation (FPUC), Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), Mixed Earner Unemployment Compensation (MEUC) and other federal UI programs.

In calendar year 2020, Missouri paid over $3.8 Billion dollars in CARES Act and other federal benefits. If the USDOL were to refuse to allow Missouri to receive future benefits under these programs it is estimated to result in the potential loss to otherwise eligible claimants of between $1 Billion and $5 Billion.

Process for Evaluating Overpayment Waivers:

Assuming enactment of legislation requiring the waiver of overpayments, the following assesses the cost to DES.

Notice to Claimants to Request a Waiver: Under federal law, DES would need to contact each potentially eligible claimant with notice of their ability to seek a waiver for CARES Act overpayments. The decision to seek a review would be up to each claimant who would need to notify DES.

Assuming approximately 45,000 individuals in calendar year 2020 have received overpayments and 95% would apply for a waiver, this would amount to 42,750 individuals. The DES estimates it would need to hire 25 Benefit Program Specialist FTE, 2 Senior Hearing/Appeals Referees, and one Admin. Support Assistant to complete this work which would cost $1,446,904 in federal funds for salary and fringe benefits.

Individualized Determinations: Under federal law, DES would need to develop procedures for an individualized, case-by-case analysis of each claim before an overpayment could be waived. No blanket waiver is allowed. This would most likely require an emergency and a proposed administrative rule to establish uniform guidelines for DES staff to make these determinations.

Federal Mandatory Waiver Standard: The CARES Act and Continued Assistance Act set forth mandatory requirements for waivers of overpayments from the CARES Act programs: (1) that the overpayment was "without fault" on the part of the claimant; and (2) repayment would be "contrary to equity and good conscience."

The states vary widely in their definitions of "without fault" and "equity and good conscience" with some states engaging in a case-by-case analysis of the claimants' income compared to the poverty line and their eligibility for various assistance programs being used as evidence of the level of an individual's need and therefore an assessment of whether waiver is appropriate.

It is estimated that DES would need to develop more specific definitions of what qualifies for being "without fault" on the part of the claimant as well as what constitutes being "contrary to equity and good conscience". In order to achieve uniform evaluations of thousands of cases, such definitions would likely need to be established though promulgation of emergency and proposed administrative rules. It is estimated that such promulgation could be accomplished with existing staff.

Develop Internal Operating Procedures/Hire and Train Staff: DES would need to establish an internal operating procedure, as many states have, for processing waiver requests. DES would need to train (and potentially hire) staff and/or contractors to assist with this process. Because state law currently prohibits waivers for overpayments, Missouri has no process for considering such requests, even for strictly federal benefits provided under the CARES Act. Establishing such procedures would likely involve the promulgation of emergency and proposed administrative rules. It is estimated that such promulgation could be accomplished with existing staff.

It should be considered that some claimants have already appealed overpayment determinations and these cases are currently pending. Such cases may have been decided by standards different than the ones contemplated in federal guidance or under pending state legislative proposals. Also, some claimants have already paid back their overpayments and might be owed a refund from the State of Missouri after an analysis of their case (see process above). This would add to the overall number of case-by-case evaluations to be made by DES staff.

Right to Appeal: Once DES has issued a denial of waiver determination, the claimant would have the right to appeal the agency decision.
This would include a hearing before an Appeals Tribunal and ultimately the claimant could appeal to the Missouri Labor and industrial Relations Commission. From there, the claimant could appeal to the state Court of Appeals.

The Office of General Counsel estimates that the additional appeals to the Courts of Appeal could be handled with existing resources.

Oversight notes the Official from DOLIR estimate loss of potential federal fund of up to between $1 Billion and $5 Billion in federal funds. Additionally, the DOLIR would be required to hire 25 (FTE) Benefit Program Specialists at $34,553 annually; 2 (FTE) Senior Hearing / Appeal Referee at $74,400 annually; and 1 (FTE) Administrative Support Assistant at $35,573 annually. However, Oversight had a limited time to analyze DOLIR's estimate, therefore, Oversight will note an Unknown negative cost to the Federal Funds.

<u>ITSD – DOLIR</u>

IT would have to create process for pandemic, incorrectly distributed to claimant overpayment waivers and hire IT Consultant to make changes within UIneract system as follow:

- Create new screen and batch for overpayment waiver process
- updates to overpayment modifications
- Updates to Inquiry screens
- Updates to Cashiering process
- Updates to BCL process
- Updates to UI Benefits offset
- Updates to Federal Reporting and financial management reports
- New forms need to be created

Oversight notes the officials from the DOLIR – ITSD estimate cost of $231,368 in FY 2022, and ongoing maintenance of $47,430 in FY 2023, and $48,616 FY 2024. However, Oversight had a limited time to verify the DOLIR's estimate, therefore, Oversight will note zero cost to the Federal Unemployment Administrative Funds.

Oversight has presented this fiscal note on the best current information available. Upon the receipt of additional responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval to publish a new fiscal note.

Officials from the Governor's Office was requested to respond to this proposed legislation but did not.

FISCAL IMPACT – State Government	FY 2022 (10 Mo.)	FY 2023	FY 2024
UNEMPLOYMENT INSURANCE TRUST FUND			
Loss - DOLIR potential loss of UI uncollected funds	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON UNEMPLOYMENT INSURANCE TRUST FUND	(Unknown)	(Unknown)	(Unknown)
UNEMPLOYMENT INSURANCE ADMINISTRATIVE FUND			
Costs - DOLIR Administrative costs	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON UNEMPLOYMENT INSURANCE ADMINISTRATIVE FUND	(Unknown)	(Unknown)	(Unknown)

FISCAL IMPACT – Local Government	FY 2022 (10 Mo.)	FY 2023	FY 2024
	$0	**$0**	**$0**

FISCAL IMPACT – Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill prohibits the Department of Labor and Industrial Relations from recovering or attempting to recover any employment security benefits that were incorrectly but non-fraudulently distributed to claimants if such employment security benefits were directly funded by moneys received by the state of Missouri from the United States government under:

(1) The federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136; or

(2) Any subsequent federal legislation or program designed, in whole or in part, to provide employment security relief. The provisions of this bill will only apply if the United States government grants the state of Missouri the authority to waive the recovery of such incorrectly but non-fraudulently distributed benefits.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations

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February 10, 2021

Ross Strope
Assistant Director
February 10, 2021