

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2311H.01I
Bill No.: HB 1097
Subject: Labor and Management; Unemployment Compensation; Employment Security;
Employees - Employers; Federal - State Relations; Emergencies; Labor And
Industrial Relations, Department of
Type: Original
Date: February 16, 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
General Revenue	Unknown	\$0	\$0
Total Estimated Net Effect on General Revenue	Unknown	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>Other</u> 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 <u>All</u> 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 or at full implementation of the act.

☒ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full 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

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume the proposal 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 the division of Employment Security (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 Specialists 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 declaration 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 through 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 officials from DOLIR estimate potential loss of federal funds of up to between \$1 Billion and \$5 Billion. 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.

Oversight notes the proposal specifically states the [DOLIR] “shall not recover or attempt to recover any employment security benefits that were incorrectly but non-fraudulently distributed.” Additionally, under “The federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136; or Any subsequent federal legislation or program designed, in whole or in part, to provide employment security relief; provided that, the United States government grants the state of Missouri the authority to waive the recovery of such incorrectly but non-fraudulently distributed benefits.”

ITSD – DOLIR

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 note that per statement from Director Anna Hui, Missouri State paid out \$5.3 Billion in unemployment assistance throughout CY 2020 which included regular (Missouri State Unemployment) and federal unemployment monies. “There were an overpayment rate of about 3 percent in 2020”. (Retrieved from: <https://missouriindependent.com/2021/02/05/missouri-gov-parson-remains-adamant-on-unemployment-repayments/>).

Oversight notes, taking DOLIR’s director assumption, it would add to the decline to Unemployment Insurance Trust fund in amount of \$159 million (\$5.3 Billion x 3%).

Oversight notes that the proposal specifically states this bill requires DOLIR to waive the recovery on non-fraudulent overpayments of unemployment benefits distributed from CARES ACT. Oversight assumes the proposal would not put the DOLIR in “out of compliance” and DOLIR would potentially stand lose anywhere from \$119.25 Million (\$159 Million x .75) to \$127.2 Million (\$159 Million x 0.8) of Unemployment Insurance Trust Fund. Therefore,

Oversight will note Unknown negative cost to the Unemployment Insurance Trust fund on the fiscal note.

Oversight notes that the DOLIR administrative costs arising due to the possible recovery of such incorrectly, but non-fraudulently distributed benefits, cannot be estimated at this time. Therefore, Oversight will note negative Unknown cost to the Unemployment Insurance Administrative Trust Fund on the fiscal note.

Additionally, in conversation with **Department of Revenue (DOR)**, and in response from to the similar proposal, HB 1083 (2313) 2021, noted: (t)his proposal states that the Department of Labor and Industrial Relations (DOLIR) shall waive the repayment of the any employment security benefits that were incorrectly but non-fraudulent distributed to claimants as a result of the COVID pandemic. Unemployment benefits are taxable income under Missouri law.

Currently, if recipients receive any unemployment benefits they owe the tax on the amount received as it is considered income. If it is determined that the unemployment benefits are overpaid then the overpaid amount is required to be collected by DOLIR and no tax is owed on the amount returned.

DOLIR notes that when the unemployment benefits were paid out in 2020 some of the money was from the federal government as part of the COVID relief package and some came out of the State's Unemployment Insurance Trust Fund (which is kept in the federal Unemployment Trust Fund and used to pay state unemployment benefits). This proposal would allow taxpayers to keep the federal portion of the benefits while leaving intact the state law requiring the collection of the overpaid state portion.

Per DOLIR, approximately 46,000 taxpayers received \$146,191,128 in overpaid benefits.

At this time, the Department has not been provided the accurate federal/state split for the payment of the benefits by the DOLIR. So to calculate the fiscal note we used a low range assuming a federal portion of 75% to a Missouri portion of 25% and for the high range used a federal/state split of 80% / 20%.

The current tax rate is 5.4% for the 2020 tax year.

		Amount of Benefit Paid	Tax on Benefit
Fed	75%	\$109,643,346	\$5,920,741
State	25%	\$36,547,782	\$1,973,580

		Amount of Benefit Paid	Tax on Benefit
Fed	80%	\$116,952,902	\$6,315,457
State	20%	\$29,238,226	\$1,578,864

Taxpayers who have received an overpayment of benefits have been issued a 1099G stating they owe income tax on the unemployment benefits. If they were to return the incorrectly issued unemployment benefits they should receive an amended 1099G showing the money was returned.

If the taxpayer pays the tax on the benefits prior to receiving an amended 1099G then they would be eligible to amend their income tax return to receive a refund of the tax paid. Under current law, the return of the full \$146,191,128 in overpaid benefits could potentially be eligible for a refund of up to \$7,894,321 tax paid.

This proposal allows the federal portion of the overpayment to be considered for waiver (which allows the taxpayers to keep the federal portion). If this payment amount is kept by the taxpayer it would be considered taxable income. If adopted, this proposal would result in an increase of taxable income and result in additional revenue to the state of up to \$5,920,741 or \$6,315,457 (depending on federal/state split) in fiscal year 2022.

Oversight notes the DOR assumes this proposal would have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Oversight will reflect an unknown revenue impact to the state, depending on the amount of forgiven benefits paid and the CY 2020 tax collections on those amounts.

Officials from the Office of the Governor was requested to respond but did not.

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
GENERAL REVENUE FUND			
<u>Revenue Impact</u> – no income tax refunds issued from unemployment benefit income paid back	<u>Unknown</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>Unknown</u>	<u>\$0</u>	<u>\$0</u>

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

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

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

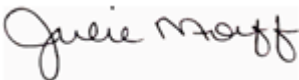
FISCAL DESCRIPTION

This bill requires the Department of Labor and Industrial Relations to waive the recovery on non-fraudulent overpayments of unemployment benefits if the funds distributed originate from the Federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) or any other Federal legislation or program.

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



Julie Morff
Director
February 16, 2021



Ross Strobe
Assistant Director
February 16, 2021