COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2313H.04C
Bill No.: HCS for HB Nos. 1083, 1085, 1050, 1035, 1036, 873 & 1097
Subject: Labor And Management; Unemployment Compensation; Employment Security; Employees - Employers; Federal - State Relations; Emergencies; Department Of Labor And Industrial Relations
Type: #Updated
Date: February 22, 2021
#Updated to clarify response from Department of Labor and Industrial Relations.

Bill Summary: The proposal modifies provisions relating to unemployment compensation benefit overpayments.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue	$5,920,741 to $6,315,457		
Total Estimated Net Effect on General Revenue	**$5,920,741 to $6,315,457**	**$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*	($48,730,376)	($48,730,376)	($48,730,376)
Unemployment Insurance Administrative Fund*	($1,778,252)	($47,430)	($48,616)
#Total Estimated Net Effect on All Federal Funds	**($50,557,244)**	**($48,777,806)**	**($48,778,922)**

*These amounts assume the overpayments were collectible and spread over 3 years.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Federal Administrative Unemployment Trust Fund	29 FTE	0 FTE	0 FTE
Total Estimated Net Effect on FTE	**29 FTE**	**0 FTE**	**0 FTE**

☒ 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 that were issued to non-eligible individuals.
(Removed Language)

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. Assuming that 95% would apply for a waiver, this would amount to 42,750 individuals. The mailing cost for these notices would be approximately $24,750. The DES estimates it would need to hire 25 Benefit Program Specialist FTE, 2 Benefit Program Supervisors, and 2 Senior Hearing/Appeals Referees to complete this work which would cost $1,522,134 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 from 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 that, throughout additional conversations with the DOLIR's officials, there are an estimated 46,000 people with non-fraud overpayments totaling $146,191,128.

Oversight will note the total cost of possible collection could involve additional 2 (FTE) Senior Hearing / Appeal Referees at $74,400 annually for FY 2022.

Oversight notes it requested additional information regarding the 25 (FTE) Benefit Program Specialists at $34,553 and 2 Benefit Program Supervisors $47,071 annually for FY 2022.

Officials from the DOLIR (MOLIS Internal Document Attachment) noted:

The specific FTEs are for processing requests for overpayment waivers. That has not been done in Missouri's history, so there is no previous data to which we can refer. The FTE are to create a process from the ground up. Missouri is one of a handful of states that do not currently waive overpayments pursuant to state law.

Oversight retrieved data (U.S. DOL – MOLIS Internal Attachment) regarding the previous performance of overpayment recovery history from 2009 to 2012 as shown in table 2 below to compare the data with the previous recession (2008 through 2009). At the time the U.S. DOL issued several Federal Extended Benefits (4 tiers EUC I, II, III, and IV) and resulted in high amount of improperly paid benefits that Missouri. The average recovery of unemployment overpayments between 2009 and 2012 totaled $32,101,333 annually. Comparing this to today's overpayment total of $146,191,128 it is approximately 4.5 times higher amount from the previous recession (shown in table 1).

Table 1.

	Total Monies to be collected (Annual)	**Total Overpaid Claims**	**Average ovrp. Per claimant**
2020 - 4.5 times higher from last recession	$ 146,191,128	46000	$ 3,178
2009-2012	$ 32,101,323	10101	$ 3,178

Table 2. https://oui.doleta.gov/unemploy/recovery/recovery_rpt.asp

CYQ	UI+EB+EUC Overpayment Established	UI+EB+EUC Overpayment Waived	UI+EB+EUC Adjusted Ops Establish	UI+EB+EUC Overpayment Recovered	Recovery Rate	Annual Average Recovery
3/31/2007	$4,725,148	$0	$4,725,148	$2,984,295	63.16%	
6/30/2007	$3,768,056	$0	$3,768,056	$2,127,385	56.46%	
9/30/2007	$4,136,614	$0	$4,136,614	$1,611,041	38.95%	
12/31/2007	$3,914,693	$0	$3,914,693	$1,630,974	41.66%	**$16,544,511**
3/31/2008	$3,600,281	$0	$3,600,281	$3,015,497	83.76%	
6/30/2008	$3,569,233	$0	$3,569,233	$2,005,660	56.19%	
9/30/2008	$3,696,334	$0	$3,696,334	$1,631,748	44.15%	
12/31/2008	$3,430,100	$0	$3,430,100	$2,020,929	58.92%	**$8,673,834**
3/31/2009	$3,157,259	$0	$3,157,259	$3,360,393	*106.43%	
6/30/2009	$4,503,326	$0	$4,503,326	$2,361,984	52.45%	
9/30/2009	$5,558,091	$0	$5,558,091	$2,636,389	47.43%	
12/31/2009	$7,641,234	$0	$7,641,234	$3,020,500	39.53%	**$20,859,910**
3/31/2010	$9,364,422	$0	$9,364,422	$3,788,566	40.46%	
6/30/2010	$10,988,025	$0	$10,988,025	$3,329,756	30.30%	
9/30/2010	$10,857,579	$0	$10,857,579	$3,080,747	28.37%	
12/31/2010	$10,854,286	$0	$10,854,286	$3,275,010	30.17%	**$42,064,312**
3/31/2011	$10,023,172	$0	$10,023,172	$4,544,049	45.34%	
6/30/2011	$10,982,432	$0	$10,982,432	$5,311,494	48.36%	
9/30/2011	$11,264,318	$0	$11,264,318	$4,063,612	36.08%	
12/31/2011	$11,639,958	$0	$11,639,958	$4,538,459	38.99%	**$43,909,880**
3/31/2012	$12,683,824	$0	$12,683,824	$6,808,657	53.68%	
6/30/2012	$10,128,043	$0	$10,128,043	$5,479,544	54.10%	
9/30/2012	$9,524,341	$0	$9,524,341	$4,689,504	49.24%	
12/31/2012	$8,326,423	$0	$8,326,423	$4,593,485	55.17%	**$21,571,190**
					AVERAGE	**$32,101,323**

#Oversight assumes that the DOLIR's request for additional 29 FTE is reasonable and will reflect the additional costs on the fiscal note for FY 22.

Oversight will also note a loss of $146,191,128 ($146,191,128 / 3 = $48,730,376) in uncollected non-fraud overpayments to the Unemployment Insurance Trust fund over three years (representing average expected time to collect the funds in appropriate manner where claimant are put on payment plan).

<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 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 ITSD estimated costs to the Federal Unemployment Administrative Funds.

Lastly, Officials from the DOLIR noted that there would be a one-time cost for mailing and postage totaling $24,750. Therefore, **Oversight** will reflect the mailing cost on the fiscal note to the Federal Unemployment Administrative Fund
Officials from the **Department of Revenue (DOR)** assume the proposal states that the:

The Department of Labor and Industrial Relations (DOLIR) shall waive the repayment of any employment security benefits that were incorrectly but non-fraudulent distributed to claimants because 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.

DOR notes that per DOLIR officials' calculations there are approximately 46,000 taxpayers who 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. Therefore, 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

The DOR does not anticipate any additional administrative cost due to the proposal.

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.

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** (**GOV**) assume this proposal would not have a fiscal impact on their respective organization.

FISCAL IMPACT – State Government	FY 2022	FY 2023	FY 2024
GENERAL REVENUE FUND			
Revenue impact (DOR) – no income tax refunds issued from unemployment benefit income paid back (p.8)	$5,920,741 to $6,315,457	$0	$0
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	**$5,920,741 to $6,315,457**	**$0**	**$0**
UNEMPLOYMENT INSURANCE TRUST FUND			
#Loss - DOLIR potential loss of UI uncollected funds (p.7)	#($48,730,376)	($48,730,376)	($48,730,376)
#ESTIMATED NET EFFECT ON UNEMPLOYMENT INSURANCE TRUST FUND	**#($48,730,376)**	**($48,730,376)**	**($48,730,376)**

FISCAL IMPACT – State Government (continued)	FY 2022	FY 2023	FY 2024
UNEMPLOYMENT INSURANCE ADMINISTRATIVE FUND (0948)			
Cost - DOLIR			
Salaries (p.5)	($922,306)	$0	$0
Fringe Benefits	($599,828)	$0	$0
Professional ITSD Equipment & Expense (p.5)	($231,368)	($47,430)	($48,616)
Mailing Cost	($24,750)	$0	$0
Total Cost - DOLIR	($1,778,252)	($47,430)	($48,616)
FTE Change DOLIR	29 FTE	0 FTE	0 FTE
ESTIMATED NET EFFECT ON UNEMPLOYMENT INSURANCE ADMINISTRATIVE FUND (0948)	**($1,778,252)**	**($47,430)**	**($48,616)**

FISCAL IMPACT – Local Government	FY 2022	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 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 CARES Act or any other Coronavirus-related Federal legislation or program.

This proposal contains an emergency clause.

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
Department of Revenue
Office of the Governor

Julie Morff
Director
February 22, 2021

Ross Strope
Assistant Director
February 22, 2021