COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0207S.01I
Bill No.: SB 294
Subject: Unemployment Compensation
Type: Original
Date: March 7, 2023

Bill Summary: This proposal creates new provisions requiring the waiver of the recovery of overpaid unemployment benefits under certain circumstances.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
General Revenue*	$0 or Unknown	$0 or Unknown	$0 or Unknown
Total Estimated Net Effect on General Revenue	**$0 or Unknown**	**$0 or Unknown**	**$0 or Unknown**

*Oversight notes a person who received overpayment of unemployment benefits is allowed to retain the unemployment payment; therefore, the income would be considered taxable. If the person was required to return overpayment (as required under current law), a tax refund would need to be issued by the DOR. The above estimate reflects a cost avoidance exceeding $250,000 from not issuing refunds.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
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 2024	FY 2025	FY 2026
UI Trust Fund*	($23,628,021)	($23,628,021)	($23,628,021)
UI Administrative Fund**	($756,065)	($813,575)	($826,295)
Various Federal Funds	($125,874)	$0	$0
Total Estimated Net Effect on All Federal Funds	**($24,509,960)**	**($24,441,596)**	**($24,454,316)**

*Officials from the Department of Labor and Industrial Relations have stated "as of December, 2022, the total dollar amount of these overpayments is approximately $70.88 million." Oversight has reflected this $70.88 million of foregone recoverable federal monies over a 3 year period $74 million / 3 years = $23.63 million).

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Federal Funds**	12 FTE	12 FTE	12 FTE
Total Estimated Net Effect on FTE	**12 FTE**	**12 FTE**	**12 FTE**

****Oversight assumes the Department of Labor and Industrial Relations will not require these additional 12 FTE beyond FY 2026.**

☒ 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 2024	FY 2025	FY 2026
Local Government	**$0**	**$0**	**$0**

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Labor and Industrial Relations (DOLIR)** note:

This legislation prohibits the Division of Employment Security (DES) from attempting to collect unemployment insurance (UI) benefits incorrectly distributed from the state unemployment compensation trust fund after March 27, 2020, but before December 31, 2020, for reasons other than claimant fraud until the claimant has been provided the opportunity to request a waiver.

Process for Evaluating Overpayment Waivers:

In August 2021, DES implemented a process to notify eligible claimants and process waiver requests for non-fraudulent federal CARES Act overpayments. This process would be used to administer the non-fraudulent state unemployment compensation overpayment waiver process, with a few minor updates to meet the requirements outlined in this bill.

Notice to Claimants to Request a Waiver: DES would need to contact each potentially eligible claimant with notice of their ability to seek a waiver for the non-fraudulent overpayments. The decision to seek a review would be up to each claimant who would need to notify DES. Approximately 61,000 individuals have received state unemployment overpayments that would potentially qualify for waiver of repayment. The mailing cost for these notices would be approximately $33,550. Assuming that 70% of eligible individuals would apply for a waiver, this would amount to 42,700. The mailing cost for these approval or denial notices would be approximately $23,485. The DES estimates that approximately 10,700 individuals would require the certified mail notice due to a lack of response within the first 60 days after the denial of waiver. The certified mail cost would be approximately $46,866. The DES estimates it would need to hire ten (10) FTE Benefit Program Specialist, one (1) FTE Benefit Program Supervisor, and one (1) FTE Senior Hearing/Appeals Referee to complete this work which would cost $639,912 for salary and fringe benefits.

As of December 9, 2022, the total dollar amount of these overpayments is approximately $70,884,062. The number of overpayments eligible for a potential waiver under this bill is likely to increase as new overpayments are established.

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.

Oversight notes the DOLIR's officials assume there are an estimated 61,000 people that would potentially qualify for waiver of repayments totaling $70.88 million.

Oversight assumes the duties of these additional 12 FTE will not last beyond FY 2026.

Oversight retrieved data 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 to Missouri. The average recovery of unemployment overpayments between 2009 and 2012 where those with overpayment totaled to 10,101individuals. Comparing this to today's overpayment of 61,000 individuals, which is approximately 6 times higher amount from the previous recession (shown in table 1). Comparison to the total amount of overpayments is approximately 2 times higher ($70,884,062 compared to $32,101,323).

Table 1.

	Total Monies to be collected (Annual)	Total Overpaid Claims	Average overpayment Per claimant
Total Overpaid Claims – 6 times higher from last recession (61,000/10,101)	$ 70,884,062	61,000	$ 1,162
2009-2012	$ 32,101,323	10,101	$ 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 12 FTE is reasonable and will reflect the additional costs in the fiscal note for FY 24, FY 25, and FY 26. Oversight will assume these FTE will not be needed beyond FY 2026.

Oversight will also note an approximate annual loss $23,628 ($70,884,062 / 3) 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 claimants are put on a 3 year payment plan).

ITSD – DOLIR

DOLIR states 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:

- Non fraud Overpayment Waiver Process
- Modify screen and batch for non-fraud waiver process
  updates to overpayment modifications
- Updates to Cashiering process
- Updates to BCL process
- Updates to UI Benefits offset
- Updates to Appeals
- Updates to Federal Reporting and financial management reports
- Updates to Inquiry screens
- New forms need to be created

Oversight notes officials from the DOLIR – ITSD estimate cost of $125,874 (ITSD contractor at $111/Hr. for 1,134 hrs. of work) in FY 2024, and assume this cost would be covered by "Various Federal Funds" associated with Coronavirus Relief Unemployment Benefit shown below:

- FPUC – Federal Pandemic Unemployment Compensation, the $600 and $300 supplement to underlying UI
- PUA – Pandemic Unemployment Assistance, the federal UI program for people not usually eligible for regular UI

- PEUC – Pandemic Emergency Unemployment Compensation, the 13 week UI extension
- LWA – Lost Wage Assistance, $300 supplement to underlying UI

Lastly, Officials from the DOLIR noted that there would be a one-time cost for mailing and postage totaling $88,478. Therefore, **Oversight** will reflect the mailing cost on the fiscal note to the Federal Unemployment Administrative Fund.

Officials from the **Department of Revenue (DOR)** note:

This proposal has an emergency clause. For the purpose of the fiscal note, DOR will assume this will become effective on July 1, 2023 (FY 2024).

This proposal is modifying the unemployment payments made by the Department of Labor and Industrial Relations (DOLIR) during the COVID pandemic, which mostly occurred in calendar year 2020. In 2021, DOLIR reported approximately 46,000 taxpayers received $150,000,000 in overpaid benefits. After waiver of the federal portion, totaling approximately $108 million there remains about $40 million in state overpayments that were made.

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 states that DOLIR shall waive the repayment of any employment security benefits that were incorrectly but non-fraudulent distributed to claimants as a result of the COVID pandemic during 2020 ($40 million). This proposal's waiver includes both the state and federal portion of the unemployment payment. The Department notes that the federal portion of the unemployment payments during that time period were already waived. However, until now the state portion remains collectable. This proposal would change that.

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. It should be noted it is taxable at both the state and federal level. If it is determined that the unemployment benefits are overpaid then the overpaid amount is required to be collected by DOLIR and once collected back from the client, no tax is then owed on the amount returned.

However, if a person is allowed to retain the unemployment payment, as this proposal intends, then that income would be considered taxable income. Given this was income received during the 2020 calendar (tax) year, DOLIR would already have issued a form 1099 G (certain government payments) to taxpayers to file with their MO-1040 reporting the income received. DOLIR noted that in 2021 few people repaid their benefits; therefore, those taxpayers would have reported the income on their MO-1040 form as taxable income when they filed between January 1, 2021 and May 17, 2021 and paid whatever tax they owed.

If all those taxpayers had paid their benefits back to DOLIR and gotten 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 $40 million in overpaid benefits could have potentially been eligible for a refund of up to $2,160,000 ($40,000,000 * 5.4%) tax paid based on the 5.4% individual income tax rate (in place in tax year 2020). The Department understands that many of these citizens are in negotiations with DOLIR and could come seek this refund.

Given this proposal would allow the citizens to keep the unemployment, they would no longer be eligible to receive the $2,160,000 worth of refunds. The Department assumes this would prevent any additional refunds in FY 2024 up to the $2,160,000.

Officials from the **Office of Administration – Budget & Planning (B&P)** noted:

Section B contains an emergency clause. For the purpose of this fiscal note, B&P will assume that this proposal would become effective during FY23.

This proposal would allow DOLIR to waive non-fraudulent incorrect payments of unemployment benefits, if money for the state portion of payments if a claimant filed during the Governor declared COVID-19 emergency.

B&P notes that this proposal would also waive non-fraudulent incorrect payments of unemployment benefits, if the money was for the federal portion and if they were received under certain circumstances.

B&P further notes that the federal portion of such overpayments is already being waived, with claimants receiving notice and information on how to file for such waivers. However, the state portion of any overpayments has not been waived. Based on publicly available data, there is approximately $40 million in state overpayments that could be waived under this proposal.

B&P notes that unemployment benefits are considered taxable income; however, incorrect payments are not considered taxable if the money is paid back to DOLIR. B&P further notes that by waiving the state portion of overpayments, the unemployment benefits would remain included in a taxpayer's taxable income DOLIR has already issued form 1099-G (certain government payments) to taxpayers for tax year 2020. Therefore, under current law – impacted individuals who have already received their 1099-G would have to repay the total incorrect payment, request an amended from 1099-G, and then file or amend their tax year 2020 returns.

B&P also notes that per federal law, the first $10,200 of an individual's unemployment benefits were exempted from 2020 income tax. It is unknown how much, if any, of the state overpayments were paid to taxpayers receiving benefits less than the federal exemption. B&P also notes that because Missouri has rolling conformity with federal income tax, the federal exemption was also granted for 2020 state income taxes. B&P assumes that under current law, if all impacted taxpayers repaid the incorrect payments, received an amended form 1099-G, and amended their tax returns approximately $2,160,000 ($40,000,000 x 5.4% top tax rate) in individual income tax payments would have been refunded to impact taxpayers. However, it is unknown how many taxpayers would have applied to receive and amended form 1099-G and how many would have amended their tax year 2020 tax return.

Therefore, B&P assumes that this proposal will prevent refunds of up to $2,160,000 in FY24.

Oversight notes if a person (claiming unemployment benefits) is allowed to retain the unemployment payment, as this proposal intends, then that income would be considered taxable income and no income tax refund would have to be issued by the DOR. However, B&P and DOR cannot be sure how many of these refunds would have to be issued or not.

Oversight notes the proposal has an emergency clause. Therefore, for purpose of this fiscal note, Oversight will reflect a positive impact due to the possible refund avoidance in the fiscal note in FY 2024.

Officials from the **Office of the Governor (GOV)** assume the proposal will have no direct fiscal impact on their organization. Therefore, **Oversight** will reflect a zero impact in the fiscal note.

FISCAL IMPACT – State Government	FY 2024	FY 2025	FY 2026
GENERAL REVENUE			
Refund Avoidance – DOR – no income tax refunds issued from unemployment benefit income paid back p.7,8	$0 or Unknown	$0	$0
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	**$0 or Unknown**	**$0**	**$0**
UNEMPLOYEMENT INSURANCE TRUST FUND			
Loss - DOLIR potential loss of UI uncollected funds (p.4,5)	($23,628,021)	($23,628,021)	($23,628,021)
ESTIMATED NET EFFECT ON UNEMPLOYEMENT INSURANCE TRUST FUND	**($23,628,021)**	**($23,628,021)**	**($23,628,021)**
UNEMPLOYMENT INSURANCE ADMINISTRATIVE FUND (0948)			
Cost – DOLIR			
Salaries (p.4,5)	($389,168)	($476,341)	($485,868)
Fringe Benefits	($278,419)	($337,234)	($340,427)
Mailing Cost	($88,478)	$0	$0
Total Cost - DOLIR	($756,065)	($813,575)	($826,295)
FTE Change DOLIR	12 FTE	12 FTE	12 FTE
ESTIMATED NET EFFECT ON UNEMPLOYMENT INSURANCE ADMINISTRATIVE FUND (0948)	**($756,065)**	**($813,575)**	**($826,295)**

VARIOUS FEDERAL FUNDS			
Cost – DOLIR ITSD changes (p.5)	($125,874)	$0	$0
ESTIMATED NET EFFECT ON VARIOUS FEDERAL FUNDS	**($125,874)**	**$0**	**$0**

FISCAL IMPACT – Local Government	FY 2024	FY 2025	FY 2026
	$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 act establishes a process for the Department of Labor and Industrial Relations (DOLIR) to waive the repayment of any unemployment benefits that were incorrectly but nonfraudulently distributed to claimants if such benefits were paid out of the state unemployment compensation trust fund, and the federal government has granted authority to the state to waive the recovery of such benefits.

The act requires any claimant who is denied a waiver to be sent a notice by DOLIR, not later than 90 days after the effective date of this act, notifying them that they are allowed to appeal such denial. If the claimant returns the notice to DOLIR within 60 days, indicating an intent to appeal the decision, then DOLIR shall cease all efforts to recover the overpaid benefits. Under no circumstances shall DOLIR or any division thereof attempt to recover the overpaid benefits while the case is pending appeal. Claimants must file an appeal not later than 60 days after notifying DOLIR.

The act additionally provides that in the case of over-recovered overpaid unemployment benefits, DOLIR is required to notify claimants by certified mail within 15 days of discovery of over-recovery and must furthermore repay the funds within 30 days of such notification if the amount is less than $10,000. If the over-recovered amount is $10,000 or more, repayment of funds shall occur within a reasonable time period, as determined by agreement of DOLIR and the claimant, with interest. If DOLIR fails to provide notice of an over-recovery then interest shall accrue starting from the date of the discovery, regardless of the amount of the over-recovery.

This act 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
Office of Administration – Budget & Planning
Department of Revenue
Office of the Governor

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March 7, 2023

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