Joint Committee on Unemployment Insurance Oversight

Maryland General Assembly
Joint Committee on Unemployment Insurance Oversight
2010 Interim
Membership Roster

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Delegate Herman L. Taylor, Jr., Co-chairman

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Senator Delores G. Kelley
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Delegate James King

Representative of the Department of Labor, Licensing, and Regulation

Ms. Julie Squire
Department of Labor, Licensing, and Regulation

Representative of the Department of Business and Economic Development

Mr. Alfredo Goyburu
Department of Business and Economic Development

Representative of the Maryland Retailers Association

Mr. Patrick Donoho, President
Maryland Retailers Association

Representative of the Job Opportunities Task Force

Mr. Jason Perkins-Cohen, Executive Director
Job Opportunities Task Force

Representatives of Union Labor (Maryland State and District of Columbia AFL-CIO)

Mr. Ernie Grecco, President
Metropolitan Baltimore Council AFL-CIO Unions

Ms. Donna Edwards
Maryland State and DC AFL-CIO

Representative of the Maryland Chamber of Commerce

Mr. Ronald L. Adler
Laurdan Associates, Inc., H.R. Consulting

Representative of the National Federation of Independent Business

Ms. Patricia Baldwin,
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Representative of the Academic Profession

Mr. Anirban Basu, M.A., M.P.P., J.D. (Mr. Morris Segall, President SPG)
Chairman & CEO, Sage Policy Group & Senior Lecturer
Towson University, Sage Policy Group

Committee Staff (Department of Legislative Services)

Tami Burt
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MARYLAND GENERAL ASSEMBLY
COMMITTEE ON UNEMPLOYMENT INSURANCE OVERSIGHT

December 16, 2010

The Honorable Martin O'Malley, Governor
The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates
Members of the Legislative Policy Committee

Ladies and Gentlemen:

The Joint Committee on Unemployment Insurance Oversight was created pursuant to Chapters 50 and 51 of 2007 to continue the work of its predecessors. Specifically, the joint committee is charged with monitoring the reforms made to the unemployment insurance tax system under Chapter 169 of 2005, as well as considering other changes to the unemployment insurance system. Due to expire at the end of 2010, the joint committee was made permanent under Chapters 515 and 516 of 2010. During the 2010 interim, the joint committee met on November 16.

At the November 16 meeting, the joint committee heard from the Assistant Secretary of the Division of Unemployment Insurance (under the Department of Labor, Licensing, and Regulation (DLLR)) on the condition of the Unemployment Insurance (UI) Trust Fund. Assistant Secretary Julie Squire also discussed the division's workload and DLLR's proposed regulations to increase attorney fees for the handling of UI cases. Further, the joint committee members discussed how they plan to proceed with their consideration of changes to the benefit structure, as required under Chapter 2 of 2010, and to the taxation of employers in seasonal industries, as required under Chapters 515 and 516 of 2010. Lastly, the joint committee discussed the concern of a declining workforce in Maryland and the need for training in sustainable and emerging technologies.

Condition of the UI Trust Fund, Taxes, Claims, and Benefits

Prior to providing an update on the condition of the trust fund, Assistant Secretary Squire commented on the collaboration from both employers and union representatives in developing changes last session to ensure a fair UI system. In the update she provided, the following issues were discussed and information related to them was presented.

UI Trust Fund Balance and Employer Taxes in Calendar 2011

The balance of the trust fund has fluctuated over the years, growing in good economic times to over $1 billion in each of calendar 2007 and 2008, and diminishing in bad economic times to a level that required the trust fund to borrow $133.8 million from the federal government in February 2010. On September 30, 2010, the balance in the trust fund fell to $273.4 million (excluding the amount borrowed), despite an infusion of $126.8 million in May 2010 of federal modernization incentive funds (received as a result of the passage of Chapter 2 of 2010). With the balance half of what is needed to allow employers to pay from a lower rate tax table in calendar 2011, Maryland employers will continue to pay from the highest tax table for another year. As provided in statute, Table F requires employers to pay tax rates from 2.2% to 13.5% assessed on each employee's taxable wages (up to $8,500). Accordingly, as is the case for calendar 2010, employers will pay from $187 to $1,147 per employee for calendar 2011. A little over 50% of employers are anticipated to pay the minimum rate allowed under Table F.

Compared to many other states, Maryland's trust fund is relatively solvent. To date, 31 states (including Maryland) and one territory have borrowed a total of $41 billion from the federal government, many of which will have to pay interest on their outstanding loan balances at the end of 2010. Maryland's federal loan of $133.8 million is anticipated to be repaid interest-free by the end of 2010. Interest may not be paid from a state trust fund, thereby requiring a state to appropriate from its general fund or impose a special assessment on employers. Further, at the end of 2010, many states will have an outstanding loan balance lasting over a two-year period, subjecting employers in their states to a higher UI federal tax. Currently, employers pay a $56 per employee federal UI tax per year (0.8% on a $7,000 taxable wage base). For example, Michigan will have had a two-year outstanding loan at the end of 2010, resulting in the assessment on Michigan employers of a 1.4% federal UI tax rate or $98 per employee in calendar 2011. Due to the trust fund solvency problem faced by the states, the U.S. Department of Labor is considering new solvency requirement rules for states to qualify for short-term interest-free loans, effective in 2014.

Payment of Claims: State and Federal UI Payments

Assistant Secretary Squire spoke about the need to properly pay benefits, meaning that only eligible claims should be paid. In Maryland, approximately 85% of applicants meet the earnings requirement, however, only approximately 75% of these are actually eligible for benefits (*i.e.*, generally, a claimant is not eligible for benefits for quitting a job or being fired for misconduct). There are concerns at the national level about UI program integrity.

Approximately 11% of claimants nationally should not have been paid UI benefits; in Maryland, approximately 4.6% should not have been paid UI benefits. A major problem occurring nationally is that claimants continue to apply for UI benefits after finding employment. Overpayments occur as it takes time for the states' UI divisions to realize that a claimant has found employment. To resolve this situation, employers should register new hires on the national database. Retrieving overpayments are difficult; however, states are considering retrieving overpayments through income tax refunds.

Maryland's division is working with Towson University to improve its processes and has received a grant to purchase software to help identify fraudulent payments. Another way to prevent overpayments is for employers to timely respond to a request from the division for a "report of a separation from employment." Upon the receipt of a claim, the division requests information from the employer to verify the circumstances of the separation. Under Maryland law, an employer is required to provide this report no later than the eight calendar day after the day of the request. Since employers do not always respond in a timely manner, the division – as a way to speed up the response time – plans to allow separation reports to be filed electronically.

Assistant Secretary Squire mentioned that the division's website now includes a video on filing claims by laid off workers. Claimants are eligible for 26 weeks at a maximum weekly benefit amount of $430 (this equates to 46% of the State's average weekly wage). The State's average weekly wage is $953, ranking Maryland as the seventh highest state. To reach 54% of the State's average weekly wage, the weekly benefit amount would have to be increased to about $525. The average duration of benefit payments has increased to 19 weeks, as compared to about 15 weeks two years ago. In fiscal 2010, the trust fund paid over $942.6 million in benefits, compared to over $890.8 million in fiscal 2009, $477.9 million in fiscal 2008, and $397.1 million in fiscal 2007. The amount of benefits paid weekly peaked at over $25 million in January 2010, compared to $24.6 million in March 2009; the amount has hovered around $16.5 million per week during the spring and summer of 2010, compared to $21.5 million per week during the same period in the prior year. Benefit pay-outs have continued to decrease in the fall of 2010. To further assist claimants in finding employment, the division is considering additional training and direct counseling, in addition to working more closely with the one-stop local centers. It is unclear as to whether claimants who are looking for part-time work are finding jobs in a shorter period of time than those looking for full-time work. Generally, claimants indicate on their claim application that they are looking for full-time work.

Currently, there are two federal UI benefit programs: the Emergency Unemployment Compensation (EUC) and Extended Benefits (EB) programs. Claimants in high unemployment states (exceeding 8%) may qualify for a total of 99 weeks (26 weeks of state benefits, 34 to

53 weeks of EUC, and 13 to 20 weeks of EB), while claimants in Maryland may qualify for up to 73 weeks (26 weeks of State benefits, 47 weeks of EU, and no EB). Maryland claimants may qualify for an additional 13 weeks (86 weeks total) through EB, but a law must be passed by the General Assembly to allow claimants to receive these benefits. Assistant Secretary Squire mentioned that the EUC program has doubled the division's workload due to the payment of $967.4 million in federal funds in fiscal 2010. The federal programs have lapsed several times only to be reinstated retroactively. The latest expiration occurred on November 30, 2010. Approximately 50,000 claimants in Maryland received EUC payments during calendar 2010.

As of mid-December 2010, the framework for a bipartisan agreement was reached to extend the federal programs through calendar 2011, meaning that unemployed workers who are currently collecting 26 weeks of state benefits will be able to move into the federal program once they have exhausted state benefits. The agreement does not include any additional weeks for those who have exhausted all possible state and federal unemployment benefits (maximum of 99 weeks).

Implementation of Chapter 2 of 2010: Benefit Changes

DLLR is working toward implementing the changes required under Chapter 2. Specifically, Chapter 2 (1) adopts an alternative base period; (2) makes part-time workers eligible for benefits (only minor changes were needed to the part-time eligibility law adopted during the 2009 session); and (3) provides Workforce Investment Act (WIA) training benefits for at least 26 weeks in high-demand industries; these benefit changes are effective March 1, 2011. To offset the cost of expanded UI benefits, Chapter 2 also reduces UI benefit eligibility to certain claimants. The Act increases the minimum amount of qualifying wages an individual must earn during the base period to be eligible for UI benefits from $900 to $1,800 effective March 1, 2012. Accordingly, the minimum weekly available benefit amount is increased from $25 to $50, reflecting the current amount available to a claimant with at least $1,800 in qualifying earnings. The Act also (1) abolishes UI benefits for claimants who become ill or disabled and are unable to seek work after filing for benefits due to the illness or disability; (2) increases the disqualification penalty for claimants who are dismissed for misconduct or gross misconduct; and (3) reduces the amount of earnings a claimant who becomes partially employed may receive that do not affect a claimant's weekly benefit (called "earnings disregard"). This amount is decreased from $100 to $50 effective March 1, 2011.

Proposed Increase in Attorney Fees

As a result of discussions last session relating to Senate Bill of 500 (failed), the division developed proposed regulations that increase the amount an attorney may collect for handling a UI case from up to 150% of the weekly benefit amount to up to 200% of the maximum benefit amount. To obtain the higher attorney fee, the attorney would have to file a request with the Chief Hearing Examiner (for a lower appeal proceeding) or with the Board of Appeals (for a higher appeal proceeding) along with an itemized account of services rendered in the case. The changes may assist a claimant who would like to hire an attorney to handle the claimant's UI claim in addition to the claimant's other non-UI matters. Assistant Secretary Squire stated that, generally, in cases where employers appeal, approximately 42% of the cases are won by employers. In cases where claimants appeal, approximately 33% of the cases are won by claimants.

Process for Consideration of Changes to the Benefit Structure and Taxation of Employers in Seasonal Industries

Benefit Structure Changes

As directed by Chapter 2 of 2010, the joint committee is required to study changes and make recommendations on a cost-neutral plan to implement a graduated increase of the maximum weekly benefit to equal 54% of the average weekly wage. Benefit changes discussed in previous years include (1) implementing a waiting week, meaning that a claimant would not receive a check for the first week the claimant was unemployed; however, the claimant would still be eligible for 26 weeks (13 states including Maryland have not implemented a waiting week); and (2) implementing variable duration, meaning that the number of weeks that a claimant could be eligible would depend on the length of time the claimant worked (9 states including Maryland use a 26-week uniform duration for all claimants; the duration provisions vary greatly among the other states).

Further, the study, including any research findings, must include a determination of whether (1) the impact of lowering the earnings disregard serves as a disincentive for claimants to return to work (possibly part-time work which may turn into full-time work); and (2) the earnings disregard should be changed from a flat amount to a fraction of weekly wages or benefits. If the study indicates that the amount of the wages subtracted in the calculation of the weekly benefit amount should be increased above $50, the joint committee has to determine a method to offset that amount with equivalent savings to the trust fund. If the study is inconclusive, the joint committee has to monitor the impact of lowering the earnings disregard.

The joint committee agreed to reconvene the small group that worked on the provisions incorporated in Chapter 2. It is anticipated that the small group will meet in mid-December 2010 and early January 2011 to begin discussing possible benefit changes as required under Chapter 2. Mr. Adler, the member of the joint committee who represents the Maryland Chamber of Commerce, also mentioned that the small group may want to also revisit the structure of the tax tables which were developed based on an ongoing approximate 4.5% unemployment rate. With a projected ongoing unemployment rate closer to 8% and therefore a higher number of claimants than anticipated when the tax tables were developed, Mr. Adler stated that the tax tables may need some tweaking.

Seasonal Employment

Chapters 515 and 516 of 2010 require the joint committee to study State and federal UI law as it relates to employers engaged in seasonal industries. Sixteen states, not including Maryland, have special provisions relating to workers employed in season industries; generally, benefits based on seasonal work are limited to unemployment occurring during the operating period of the seasonal industry. The study must consider (1) the impact of UI benefit payments on employers in a county where the average unemployment rate exceeds the State average, and (2) how the obligations and payments may be reduced for employer units engaged in seasonal industries. The joint committee discussed concerns with making changes to account for seasonal employment, including creating unintended loop-holes and taking employers out of the UI system. Senator Middleton suggested that the joint committee begin working on this issue at future meetings.

Workforce Development

Lastly, the joint committee discussed the concern of a declining workforce in Maryland and the need for training in sustainable and emerging technologies. On the other hand, the joint committee agrees with predictions that the Base Realignment and Closure (BRAC) Program will be a highly significant job creator for Maryland. **Therefore, for purposes of a presentation on workforce development needs to be made to the joint committee in January 2011, Senator Middleton requested information from DLLR's Division of Workforce Development and Adult Learning and from the representatives of the academic profession, the Department of Business and Economic Development, and the Chamber of Commerce.**

The joint committee would like to express its appreciation for the time and effort invested by all members and agency staff. The joint committee looks forward to the same spirit of cooperation and assistance in the future as it continues its responsibilities of monitoring the unemployment insurance system.

Respectfully submitted,

Thomas McLain Middleton
Senate Co-chair

Herman L. Taylor, Jr.
House of Delegates Co-chair

TMM:AMD/TDB/ncs