



# Unemployment Insurance Study Committee

Committee Charge and Legislative Background

September 14, 2021

# Outline of Presentation

- Appointment of Chair and Vice Chair
- Statutory Charge
- Relevant Federal and State Legal Background
  - Trust Fund Financing
  - Benefits
  - Waiver of penalties and overpayments
  - Reimbursable employers

# Appointment of Chair and Vice Chair

- 2021 Acts and Resolves No. 51, § 15(f)(2) provides that the Study Committee “shall select a chair from among its members at the first meeting.”
- In addition, the Committee may appoint a vice chair.

# Statutory Charge

- 2021 Acts and Resolves No. 51, § 15(b)(1) provides that the Committee shall study the following issues:
  - (A) the solvency of Vermont's Unemployment Insurance Trust Fund and the amount necessary to ensure that the Trust Fund remains solvent and able to continue meeting the needs of claimants during a future economic recession and subsequent recovery;
  - (B) the adequacy and appropriateness of Vermont's unemployment insurance benefits, whether Vermont's benefits should be increased, and whether the Vermont statutes related to benefits should be modified in any manner;

# Statutory Charge

- (C) instances for which it may be appropriate to provide the Commissioner of Labor with authority to reduce or waive a period of disqualification imposed in relation to a determination of unemployment insurance fraud;
- (D) instances for which it may be appropriate to provide the Commissioner of Labor with authority to reduce or waive an individual's liability to repay overpaid unemployment insurance benefits; and
- (E) potential statutory changes to mitigate the impact of benefit charges attributed to reimbursable employers who paid wages to a claimant during the claimant's base period but did not cause the claimant to become unemployed.

# Statutory Charge

- 2021 Acts and Resolves No. 51, § 15(c)(2) provides:
- In studying the issues set forth in subdivision (1) of this subsection, the Committee shall compare Vermont's unemployment insurance system with the unemployment insurance systems of other states and specifically identify:
  - (A) best practices and high performing aspects of other states' unemployment insurance systems;
  - (B) shortcomings, challenges, and opportunities for improvement in Vermont's unemployment insurance system;

# Statutory Charge

- (C) potential changes and improvements to the Vermont Department of Labor's staffing, resources, information technology, training, funding, communications, practices, and procedures that are necessary to address the shortcomings, challenges, and opportunities for improvement identified pursuant to subdivision (B) of this subdivision (c)(2);
- (D) potential statutory changes necessary to address the shortcomings, challenges, and opportunities for improvement identified pursuant to subdivision (B) of this subdivision (c)(2); and
- (E) to the extent possible, the anticipated cost of implementing the changes and improvements identified pursuant to subdivisions (C) and (D) of this subdivision (c)(2) and any ongoing costs associated with such changes and improvements.

# Meetings and Report Requirement

- The Committee has funding for three meetings.
- Report requirement:
  - On or before December 15, 2021, the Committee shall submit a written report to the House Committees on Appropriations, on Commerce and Economic Development, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance with its findings and any recommendations for legislative action.

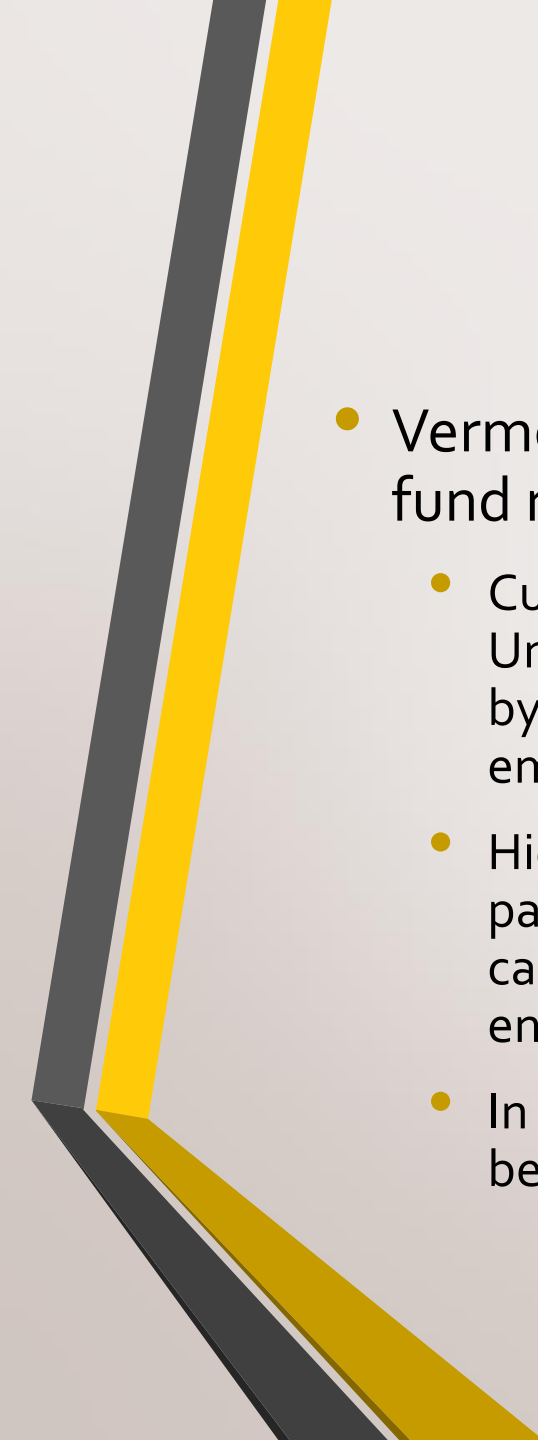


# Federal Legal Background: Unemployment Insurance Financing

- USDOL does not have an official standard for trust fund solvency.
- However, under 20 C.F.R. 606.32(b)(2), one of the conditions for a USDOL solvency loan to be interest free is that the state “as of December 31 of any of the 5 consecutive calendar years preceding the calendar year in which such advances are made, had an [Average High Cost Multiple] of at least 1.00”
- AHCM is equal to  $(\text{Trust Fund Balance} / \text{Total Wages}) / (\text{Average High Cost Rate})$ 
  - Average High Cost Rate is the average of the three highest annual benefit cost rates in the last twenty years (or a period including three national recessions, if longer).
- An AHCM of 1.0 means the state has reserves equal to one year of average recession level benefits.

# Federal Legal Background: Unemployment Insurance Financing

- The standard state rate of contributions from which credits against the 6.0% federal unemployment tax are calculated is 5.4%. See 26 U.S.C. § 3303(c)(8).
- States may only provide a reduced rate of contribution (relative to the standard rate) on the basis of at least 3 years of employer experience. 26 U.S.C. § 3303(a)(1).
  - New employers may be permitted to pay at a reduced rate of at least 1%. 26 U.S.C. § 3303(a).

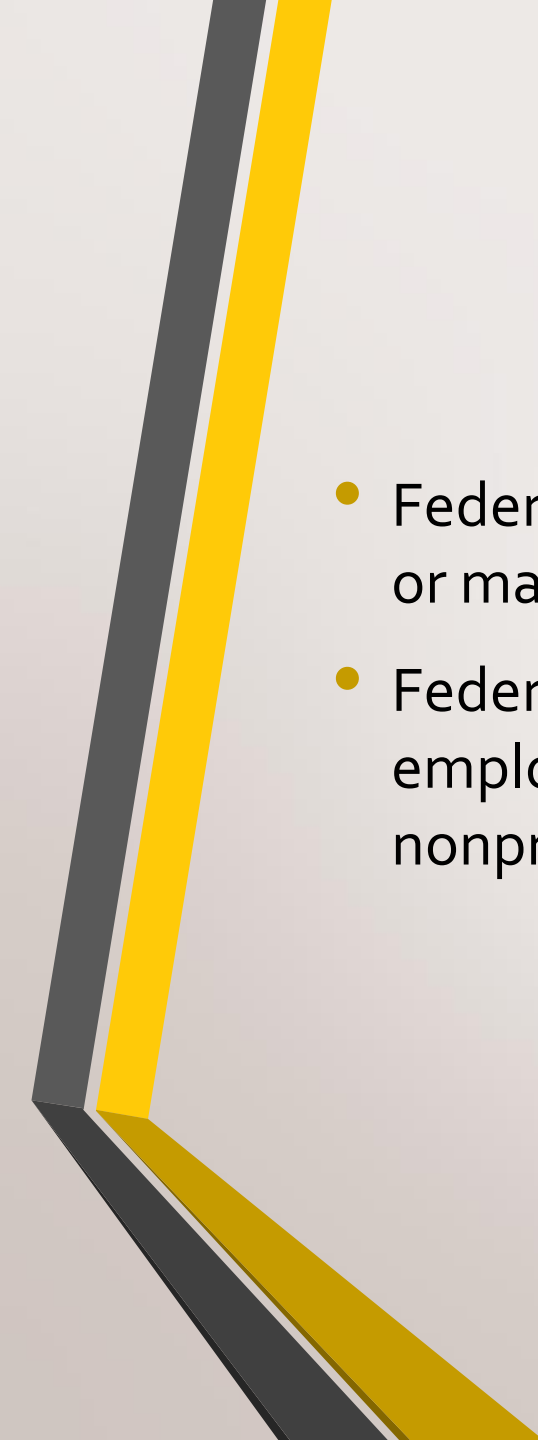


# State Legal Background: Unemployment Insurance Financing

- Vermont's tax rate is annually determined by dividing the State's current fund ratio by its highest benefit cost rate.
  - Current fund ratio is "determined by dividing the available balance of the Unemployment Compensation Fund on December 31 of the preceding calendar year by the total wages paid for employment during the said calendar year as reported by employers by the following March 31." 21 V.S.A. § 1326(d)(1).
  - Highest benefit cost rate is "determined by dividing the highest amount of benefit payments made during a consecutive 12 month period which ended within the [last 10 calendar years] by the total wages paid during the four calendar quarter periods which ended within such 12 month period."
  - In essence, this formula compares the current health of the UITF to the amount of benefits paid during the worst year in the past decade.

# State Legal Background: Unemployment Insurance Financing

<b>Current Fund Ratio/Highest Benefit Cost Rate =</b>	<b>2.50 and above</b>	<b>2.00-2.49</b>	<b>1.50-1.99</b>	<b>1.00-1.49</b>	<b>Under 1.00</b>
<b>Resulting Tax Schedule</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>	<b>V</b>



# Federal Legal Background: Unemployment Insurance Benefits

- Federal law does not require a specific benefit rate or establish a minimum or maximum UI benefit rate.
- Federal law does require the payment of UI benefits to certain types of employees, such as employees of state and local governments, tribes, and nonprofit organizations. *See* 26 U.S.C. § 3304(6).

# State Legal Background: Unemployment Insurance Benefits

- “An individual’s weekly benefit amount shall be determined by dividing the individual’s two high quarter total subject wages required under subdivision (d)(1) of this section by 45; provided that the weekly benefit amount so determined shall not exceed the maximum weekly benefit amount computed pursuant to subsection (f) of this section.” 21 V.S.A. § 1338(e)(1).
  - Works out to about 57.8% of an individual’s wages during the two high quarters.
  - A \$25.00 additional benefit was supposed to take effect on October 6, 2021, but was determined to be out of conformance with federal law.
- “The maximum weekly benefit amount shall be annually adjusted on the first day of the first calendar week in July to an amount equal to 57 percent of the State annual average weekly wage as determined by subsection (g) of this section.” 21 V.S.A. § 1338(f)(1).



## Federal Legal Background: Waiver or Reduction of Period of Disqualification

- 26 U.S.C. § 3304(a)(10) permits states to deny UI benefits on the basis of “discharge for misconduct connected with his work, **fraud in connection with a claim for compensation**, or receipt of disqualifying income.”
- 42 U.S.C. § 503(a)(11) requires states to assess a penalty equal to “15 percent of the amount of the erroneous payment” against a claimant who received benefits as a result of fraud.

# Federal Legal Background:

## Waiver or Reduction of Benefit Overpayments

- 26 U.S.C. § 3304(a)(4)(D) requires deductions from unemployment benefits to repay prior benefit overpayments.
- 42 U.S.C.A. § 503(g)(1) provides:
  - “A State shall deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.”
- States may provide for a waiver of recovery of overpayments and the federal DOL has previously encouraged states to adopt policies that permit waiver of non-fault overpayments “when recovery . . . would be contrary to equity and good conscience.” See UIPL 01-16.



# Vermont Legal Background: Periods of Disqualification

- "...when it is found by the Commissioner that a person intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits and in the event the person is not prosecuted under section 1368 of this title and penalty provided in section 1373 of this title is not imposed, the person shall be disqualified and shall not be entitled to receive benefits to which he or she would otherwise be entitled after the determination for such number of weeks not exceeding 26 as the Commissioner shall deem just." 21 V.S.A. § 1347(e).
- Vermont law does not provide for a waiver or reduction of an individual's period of disqualification after the determination becomes final.

# Vermont Legal Background: Overpayments

- “...any person who by nondisclosure or misrepresentation by him or her, or by another, of a material fact (**irrespective of whether such nondisclosure or misrepresentation was known or fraudulent**) has received any amount as benefits under this chapter while any conditions for the receipt of benefits . . . were not fulfilled . . . or . . . was disqualified from receiving benefits, shall be liable for such amount.” 21 V.S.A. § 1347(a).
- “The person liable under this section shall repay such amount to the Commissioner for the Fund.” 21 V.S.A. § 1347(c).
- “. . . the Commissioner may withhold, in whole or in part, any future benefits payable to such person, and credit such withheld benefits against the amount due from such person until it is repaid in full . . .” 21 V.S.A. § 1347(d).

# Federal Legal Background: Reimbursable Employers

- 26 U.S.C. §3303(e):
  - **Payments by certain nonprofit organizations.**--A State may, without being deemed to violate the standards set forth in subsection (a), permit an organization (or a group of organizations) described in section 501(c)(3) which is exempt from income tax under section 501(a) to elect (in lieu of paying contributions) to pay into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to service performed in the employ of such organization (or group).
- 42 U.S.C. § 3309(a) requires states to permit local governments, tribes, and nonprofit organizations who would otherwise be liable for contributions under state law to elect to reimburse the state's UI TF for benefits in lieu of paying contributions.

# State Legal Background: Reimbursable Employers

- A nonprofit may elect to become a reimbursable employer 21 V.S.A. § 1321:
  - (c)(2)(B) “Any nonprofit organization . . . may elect to become liable for payments in lieu of contributions for a period of not less than 12 months . . . by filing a written notice of its election with the Commissioner . . . .”
  - (c)(2)(C) “Any nonprofit organization which makes an election . . . will continue to be liable for payments in lieu of contributions until it files with the Commissioner a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which such termination shall first be effective.”
  - (c)(2)(D) “Any nonprofit organization which has been paying contributions under this chapter . . . may change to a reimbursable basis by filing with the Commissioner not later than 30 days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that year and the next year.”

# State Legal Background: Reimbursable Employers


- Payment of Reimbursable Contributions:
  - “At the end of each calendar quarter, or at the end of any other period as determined by the Commissioner, the Commissioner shall bill each nonprofit organization, or group of such organizations, which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.” 21 V.S.A. § 1321(c)(3)(A).

# State Legal Background: Reimbursable Employers

- Alternative Method for Payment of Reimbursable Contributions:
- Under 21 V.S.A. § 1321(B) a reimbursable nonprofit organization may request permission to pay in the following manner:
  - A quarterly bill for a percentage of its payroll for the preceding calendar year that is based on the average benefit costs attributable to the nonprofit organizations in the preceding calendar year; or
  - For nonprofit organizations that did not pay wages in all four quarters of the preceding year, a percentage of its payroll determined by the Commissioner.
  - Commissioner may modify the amounts each quarter.
  - If payments are less than the amount of benefits for which the organization is liable in a calendar year, it is required to pay the unpaid balance within 30 days. If the payments exceed the amount of benefits for which the organization is liable in a calendar year, the organization can elect to have that amount refunded or to apply it to its liability for the coming year.

# State Legal Background: Reimbursable Employers

- Allocation of Liability for Benefit Costs:
  - Employers are liable for all attributable regular benefits and  $\frac{1}{2}$  of attributable extended benefits
  - If more than one employer paid wages to an individual during the base period, benefit costs are allocated among the base period employers in proportion to the wages paid by each employer to the individual during the base period.
  - Note: In Vermont, benefit costs are allocated to base period employers, not necessarily a claimant's most recent employer.
  - Two or more reimbursable employers may establish a group account to share benefit costs attributable to the employers.



Any Questions?