WORKING DRAFT

Report of the Unemployment Insurance Study Committee
December 2021

Representative Emilie Kornheiser, Chair

Senator Christopher Pearson, Vice Chair

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I. Introduction and Background

In 2021 Acts and Resolves, No. 51, Sec. 14a, the General Assembly created the Unemployment Insurance Study Committee to examine the solvency of Vermont's Unemployment Insurance Trust Fund, the adequacy of unemployment insurance benefits, the possibility of granting the Commissioner of Labor authority to reduce or waive certain penalties, and potential options for mitigating the liability of reimbursable employers for benefits paid under certain circumstances. The Study Committee is composed of four members, one member each from the House Committees on Commerce and Economic Development and on Ways and Means and the Senate Committees on Economic Development, Housing and General Affairs and on Finance. The Committee was provided with funding for up to three meetings.

The Committee's work began with a review of Vermont's unemployment insurance law, which has been shaped by the complicated interaction between State-level policy decisions, federally imposed requirements, and, more recently, the limitations of Vermont's aging mainframe computer system. Many provisions of the law are the result of painstaking legislative compromise between stakeholders within the constraints of federal limitations and administrative possibility. Many other provisions of Vermont's law were enacted to address specific federal requirements, which must be satisfied to avoid the risk of losing federal funding for the administration of the program and a credit against the federal unemployment tax paid by employers.[1]

Because of these challenges, many aspects of Vermont's unemployment insurance law have remained unchanged for years or, in some cases, decades. One provision examined by the Committee, Vermont's statutory formula for determining a claimant's weekly benefit amount, was last changed in January 1988 by an act passed in 1986.[2] Similarly, Vermont's unemployment tax schedules were last updated in 1984[3] and the taxable wage base, which is now annually updated, remained at $8,000.00 from 1983 until 2010.[4] The changes to the taxable wage base were spurred by the insolvency of the Unemployment Insurance Trust Fund following the 2008 recession and were part of a larger legislative package intended to restore the Fund to solvency.

Against this backdrop, Vermont's mainframe computer system has continued to use software that dates to the 1970s. The coding language used on the mainframe, F-COBOL, is so old that the State staff skilled at working in that language have all retired. Further complicating this situation is the lack of documentation for the UI software, which raises the risk of unpredictable results following any changes to the code.[5] Finally, the mainframe lacks the development and testing environments that allow changes to be safely made in modern computer systems.

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[1] *See*, *e.g.*, 2012 Acts and Resolves, No. 162, § E.401.2 and 2014 Acts and Resolves, No. 179, § E.400.1 (enacting federally required 15 percent penalty for benefits received because of fraud).
[2] *See* 1986 Acts and Resolves, No. 146. § 2.
[3] *See* 1984 Acts and resolves, No. 124, § 2.
[4] *See* 1983 Acts and Resolves, No. 16, § 3 (enacting $8,000.00 taxable wage base for all wages paid after December 31, 1982); 2009 (Sp. Sess.) Acts and Resolves, No. 2, § 1 (establishing $10,000.00 taxable wage base for calendar year 2010); and 2010 Acts and Resolves, No. 124, § 2 (establishing $13,000.00 taxable wage base for 2012, $16,000.00 taxable wage base for 2013, and provisions governing annual adjustments to taxable wage base in subsequent years).
[5] *See* Appendix 3: The Feasibility of Changing the Unemployment Insurance Mainframe Program.

Because of the lack of State staff skilled in the F-COBOL programming language, the State has been forced to utilize contactors to make changes and address issues related to the mainframe. The lack of documentation means that even skilled contractors cannot be certain of the impact of changes to the underlying code. The absence of development and testing environments requires programming changes to be made using the same mechanism used to make routine edits to correct inaccurate data in the system. There is little ability to test new code before it goes live in the system and each time a change is made, there is a risk that an unanticipated issue will cause the system to crash. During the height of the pandemic, the mainframe crashed roughly once a week.

During the past decade, the Department has engaged in two separate federally funded efforts to develop a modern unemployment IT system as part of a consortium with other states. For a variety of reasons, in both instances, the State had to pull out of the consortium without having successfully replaced the mainframe. When the pandemic arrived in Vermont, the State was in the process of dissolving the most recent consortium because of a lack of cooperation between the lead state and the partner states, including Vermont.

During the initial weeks of the pandemic, weekly claims jumped from fewer than 5,000 claims in the weeks leading up to the pandemic to 76,457 regular unemployment insurance claims during the week ending April 25, 2020.[6] The unprecedented increase in claims overwhelmed the Department of Labor's limited staff resources and aging mainframe system. This led to a significant backlog in processing claims, frequent crashes of the mainframe, enormous amounts of staff overtime, the need to contract out call center functions, a dramatic increase in fraud attempts by organized crime actors, and numerous other issues that have been well-documented in legislative testimony since then.

The unprecedented surge in unemployment and challenges in processing claims at the beginning of the pandemic highlighted not only the limitations of the mainframe, but a lack of flexibility in certain parts of the law. One issue of particular concern to the General Assembly during the early weeks of the pandemic was the Commissioner's lack of authority to waive, suspend, or modify the amount that an individual was required to repay following an overpayment and the period of disqualification imposed on an individual who had previously been determined to have committed fraud in relation to an unemployment claim. 21 V.S.A. § 1347 imposes requirements for claimants to repay benefits that are overpaid because of mistake, error, or fraud but does not provide the Commissioner with any authority to waive or reduce an individual's liability to repay those amounts under appropriate circumstances. Similarly, once a period of disqualification from eligibility for unemployment benefits is imposed against an individual following a finding of fraud, the period of disqualification does not expire until it has been served and the Commissioner is without authority to reduce that penalty.[7] Because of this, legislators received numerous reports from constituents and Vermont Legal Aid regarding claimants whose benefits were significantly reduced or who were ineligible to receive benefits because of a period

[6] For additional context, in the week ending November 5, 2021, the Department of Labor reported only 2,181 regular unemployment claims; less than three percent of the number of claims the Department was handling in late April of 2020.

[7] The period of disqualification is commonly referred to as a "penalty week" or "penalty weeks."

of disqualification imposed in relation to a prior claim. Despite the concern these reports generated, a legislative solution to the issue was not found.

Legislative action was, however, able to able to mitigate some potential adverse consequences of the pandemic by relieving employers from COVID-19-related charges against their experience rating and by removing the unprecedented benefit payments in 2020 from the calculation used to determine the balance needed in the Unemployment Insurance Trust Fund and the tax schedule necessary to achieve that balance. However, significant reserves remaining in the Trust Fund despite the unprecedented benefit payments in 2020 raised new questions regarding what the appropriate target balance for the Trust Fund is and whether Vermont's unemployment taxes might be higher than necessary.

In addition to the challenges to employers who pay regular unemployment taxes, the pandemic presented significant challenges to nonprofit employers who reimburse the Trust Fund for any benefits paid that are attributable to that employer. The cost of reimbursing the Trust Fund for benefits paid in relation to even a single claim can be significant for a smaller nonprofit employer, even during good economic times. In some instances, the way that benefits are charged under Vermont law means that an employer may be charged for benefits paid to a claimant despite not being the reason for the unemployment. This is because Vermont's law charges benefit costs to the employers who paid the wages in a claimant's base period (usually four of the last five completed calendar quarters) that are used to determine the claimant's weekly benefit amount. The employer who laid off the claimant may have only paid a small portion of the claimant's base period wages or, in some instances, may not have paid any wages in the claimant's base period. While reimbursable employers did receive some federal relief, the unique circumstances of the pandemic exacerbated these challenges for reimbursable employers.

Throughout the pandemic until September 2021, unemployment insurance claimants benefitted from a variety of federal programs that supplemented regular unemployment insurance benefits or provided additional benefits when claimants exhausted their regular benefits.[8] The positive impact of the increased benefits on claimants' well-being and the State economy raised questions regarding whether Vermont's benefits should be increased, particularly for lower-income claimants who may struggle to make ends meet during a period of unemployment. Some members of the General Assembly also felt that providing an increase in benefits in concert with the measures intended to prevent or mitigate tax related impacts on employers would carry on a tradition of sharing benefits and burdens between employers and employees in the State's unemployment insurance system.

These considerations sparked multiple proposals in the General Assembly, including a dependent benefit that was proposed by the Senate and a $25.00 supplemental benefit for all claimants that was ultimately enacted as part of Act 51. However, on August 24 of this year, the State Department of Labor informed legislative leadership that the U.S. Department of Labor (USDOL) had determined that the newly enacted supplemental benefit did not conform with the requirements of federal law. USDOL issued a formal notice of nonconformance the following

[8] These programs included Federal Pandemic Unemployment Compensation, Mixed Earners Unemployment Compensation, and Pandemic Emergency Unemployment Compensation. In addition, self-employed individuals were able to receive benefits through the federal Pandemic Unemployment Assistance program.

week, on September 1, and left the State with three options: (1) pay the supplemental benefit as part of the regular weekly benefit amount; (2) pay the supplemental benefit from a separate funding stream; or (3) repeal the supplemental benefit provision. Because of the significant issues with the mainframe, the State Department of Labor has indicated that the first option would be difficult, if not impossible, to implement and would carry a significant risk of a catastrophic mainframe crash that could prevent the State from processing claims and paying benefits for weeks.

The events and issues outlined above provided the basis for the Committee's legislative charge and informed its work. The Committee's charge, work, and recommendations in relation these issues are discussed in detail in the following sections of this report.

II. Legislative Charge

The General Assembly established the Unemployment Insurance Study Committee in 2021 to examine the solvency of Vermont's Unemployment Insurance Trust Fund, its benefit structure, potential grants of authority for the Commissioner of Labor to reduce or waive certain penalties, and potential measures to mitigate the liability of reimbursable employers for some benefit charges. Specifically, the Study Committee was charged with studying 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;
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.

During its examination of those issues, the General Assembly directed the Study Committee to consider the following:

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;
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 (c)(2)(B) of Act 51;

D. potential statutory changes necessary to address the shortcomings, challenges, and opportunities for improvement identified pursuant to subdivision (c)(2)(B) of Act 51; and
E. to the extent possible, the anticipated cost of implementing the changes and improvements identified pursuant to subdivision (c)(2)(C) and(D) of Act 51 and any ongoing costs associated with such changes and improvements.

III. Summary of Study Committee Activities

The Study Committee met three times to hear testimony from stakeholders and experts on the issues within its jurisdiction.[9] The Committee took testimony on and discussed the following subjects:

- Vermont’s existing laws related to each of the issues that the Committee was charged with examining;
- the laws of other states regarding the issues that the Committee is charged with examining;
- a determination from USDOL that prevented a $25.00 supplemental unemployment benefit from being implemented in Vermont;
- the capabilities and limitations of Vermont’s existing mainframe computer and IT system;
- potential changes to the unemployment insurance IT system;
- potential changes to Vermont’s unemployment tax laws to provide sufficient reserves to pay benefits during a recession without taxing employers more than is necessary to do so;
- various models for altering Vermont’s unemployment benefits;
- the use of surcharges to generate additional funding for various unemployment insurance-related purposes;
- potential statutory changes to provide the authority to waive or reduce an individual’s liability to repay overpaid unemployment benefits;
- potential statutory changes to provide the authority to waive or reduce a period of disqualification from unemployment benefits under certain circumstances; and
- potential statutory changes to mitigate adverse impacts of Vermont’s existing laws on reimbursable nonprofit employers.

IV. Solvency of Vermont’s Unemployment Insurance Trust Fund

Prior to the closure of many parts of Vermont’s economy in response to the COVID-19 pandemic in March 2020, USDOL had ranked Vermont’s Unemployment Insurance Trust Fund as the healthiest in the nation based on a comparison of its current fund balance to potential future high benefit costs. USDOL’s assessment was based on a measure known as the Average High Cost Multiple (AHCM), which projects future benefit costs based on past experience. A state’s AHCM is determined by the following formula:

$$AHCM = \frac{(Trust\ Fund\ Balance - outstanding\ loans)/(Total\ Wages)}{Average\ High\ Cost\ Rate^{10}}$$

[9] See Appendix 2: Witness List.
[10] Average High Cost Rate is the average of the three highest annual benefit cost rates in the last twenty years or, if longer, a period including three national recessions.

An AHCM of 1.0 is an indication that the Trust Fund balance is sufficient to pay an average year of recession-level benefits. As of January 1, 2020, Vermont's Trust Fund had a balance of over $516 million and an AHCM of 2.53.[11] By January 1, 2021, the Trust Fund's balance had fallen to roughly $222 million and the AHCM had dipped to 0.86.[12]

Vermont's Trust Fund is funded by payroll taxes known as unemployment insurance contributions that are paid by employers who are covered by the unemployment insurance law. The amount of taxes that an employer pays into Vermont's Trust Fund for each of its employees is determined by three things: (1) the State's taxable wage base; (2) the current tax schedule for the State; and (3) the employer's tax class for purposes of unemployment insurance.

The taxable wage base for Vermont is currently $14,100.00. The wage base is updated annually on January 1. In most years, the taxable wage base increases on January 1 "by the same percentage as . . . the State annual average wage" determined pursuant to 21 V.S.A. § 1338(g).[13] However, when the tax schedule drops to either Schedule III or Schedule I, the taxable wage base is decreased by $2,000.00 in the following year. The most recent such decrease occurred this past January.

The provision for annual adjustments to the taxable wage base was added in 2010 following the depletion of the Trust Fund during the 2008 recession.[14] Prior to the recession, Vermont's taxable wage base had remained at $8,000.00 since 1983. With inflation steadily eroding the value of the taxable wage base, Vermont's Trust Fund balance slowly decreased throughout the early 2000s, and the 2008 recession forced Vermont to borrow from the federal government in order to continue paying unemployment benefits.[15] The annual increase in Vermont's current taxable wage base formula is designed to avoid a similar situation.

21 V.S.A. § 1326(e) provides for five different rate schedules depending on the health of the Trust Fund. The rate schedule is adjusted annually on July 1 based on the ratio "determined by dividing the current fund ratio by the highest benefit cost rate."[16] That relationship is shown by the following formula:

$$\frac{(Prior\ CY\ end\ Trust\ Fund\ balance\ /\ Prior\ CY\ wages)}{(Highest\ 12-month\ benefit\ total\ in\ last\ 10\ yrs\ /\ Wages\ in\ quarters\ ending\ in\ that\ period)}$$

The resulting ratio determines the tax schedule for the coming year, with a ratio of 2.50 or above resulting in the lowest tax schedule, Schedule I, and a ratio below 1.00 resulting in the

[11] U.S. Department of Labor, State Unemployment Insurance Trust Fund Solvency Report 2020, *available at*: https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2020.pdf.
[12] U.S. Department of Labor, State Unemployment Insurance Trust Fund Solvency Report 2021, *available at*: https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2021.pdf.
[13] 21 V.S.A. § 1321(b).
[14] *See* 2009 Acts and Resolves, No. 124, § 2. Prior to the enactment of that provision, 2009 (Sp. Sess.) Acts and Resolves, No. 2, § 1 increased the taxable wage base from $8,000.00 to $10,000.00 for calendar year 2010.
[15] *See* Appendix 4: Vermont Unemployment Insurance Trust Fund: Data and Options.
[16] 21 V.S.A. § 1326(e)

highest tax schedule, Schedule V. The current tax schedule is Schedule III.[17] The tax schedules and related ratios were last updated in 1984, when the number of schedules was reduced from seven to five.[18]

Within each tax schedule, there are 21 tax classes. Employers who have no attributable benefits charges in the last three years are assigned to class 0, while employers with attributable benefit charges during that period are assigned to classes 1 through 20 based on their benefits ratio in comparison to other employers. An employer's benefits ratio measures its unemployment experience and is determined by dividing the amount of benefits attributable to the employer during the previous three years by their taxable payroll during that period. Employers with the lowest benefits ratios are assigned to class 1, and those with the highest are assigned to class 20.

DISCUSS OTHER STATES, COMMITTEE DISCUSSION, AND MODELING

V. Adequacy of Vermont's Unemployment Insurance Benefits

A claimant's weekly unemployment insurance benefits are determined by dividing the total wages earned by the claimant during the two highest quarters of the claimant's base period by 45, up to the State maximum weekly benefit.[19] Vermont's maximum weekly benefit is annually adjusted at the beginning of July to be equal to 57 percent of the State average weekly wage for the preceding calendar year and is currently $583.00 per week.[20]

While Vermont does not have a specific minimum weekly benefit amount, a claimant's minimum weekly benefit is determined by the amount of base period wages required to qualify for unemployment insurance benefits. Vermont currently requires a claimant to have earned at least $2,999.00 in one calendar quarter in their base period and an additional 40 percent of that amount spread across the remaining three calendar quarters of their base period. Thus, the current minimum weekly benefit amount for Vermont is $75.00.[21] As a practical matter, few, if any, claimants receive the minimum benefit amount.

The Committee examined the wide variety of weekly benefit amounts and formulas utilized by other states.[22] Because federal law does not set any standards regarding unemployment insurance benefit amounts, each state has a somewhat different benefit formula, and the weekly benefit amount that a claimant would be eligible for may vary greatly from one state to the next. In general, however, all states provide a wage single replacement rate that applies to all claimants with a maximum weekly benefit amount and, in some cases, a minimum weekly benefit amount. In addition, certain states provide a dependent benefit, which provides an additional amount per

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[17] The tax schedule for the period from July 1, 2021, to June 30, 2022, would have been Schedule V if not for an amendment to 21 V.S.A. § 1326(d) that requires the highest benefit cost rate to be calculated without consideration of calendar year 2020.
[18] *See* 1983 (Adj. Sess.) Acts and Resolves No. 124, § 2.
[19] 21 V.S.A. § 1338(e).
[20] 21 V.S.A. § 1338(f) and (g).
[21] With high quarter wages of $2,999.00 and wages spread equally across the remaining three quarters, the minimum amount necessary for a claimant to qualify for unemployment insurance benefits is $3,399.00 ($2,999.00 + $400.00). Therefore, the weekly benefit for that claimant would be $3,399.00/45=$75.53, which rounds off to $75.00.
[22] *See* Appendix 5: 50 State Summary of UI Benefit Rates.

dependent. As with the underlying weekly benefits, the additional amount, number of dependents, and types of dependents covered varies from state to state.[23]

Despite the significant flexibility afforded by federal law, Vermont's ability to change its weekly benefit amount is limited by its outdated mainframe computer system. The Department of Labor and the Agency of Digital Services both testified that while it is theoretically possible to reprogram the mainframe to adjust Vermont's weekly benefit amount, such a change would present significant risks to the stability of the system. Because the weekly benefit amount is tied to numerous other calculations performed by the mainframe, any coding error could result in a cascade of errors throughout the system, which could, in turn, result in a system crash. In a worst-case scenario, such a crash could disable the system for an extended period and render Vermont unable to administer its unemployment insurance program. Because of these risks, both the Department of Labor and the Agency of Digital Services advised against making an immediate change to the benefits formula.

While a change to the underlying formula presents significant challenges, the Department of Labor and Agency of Digital Services did indicate that a change to the maximum weekly benefit amount could be possible because that amount is updated annually. In addition, the Commission of Labor indicated that it might be possible to also create a minimum weekly benefit. However, the Commissioner of Labor did caution the Committee that recent changes to the maximum weekly benefit have caused some problems and errors in the system, but these risks appear to be less significant than a change to the underlying formula.

The challenges presented by the aging computer system played a significant role in the events that prevented a $25.00 increase in benefits from being implemented in early October of this year. As discussed in greater detail above, USDOL determined that the payment of a supplemental benefit with Trust Fund dollars was not permissible unless the increased benefit was calculated as part of the weekly benefit amount or implemented with non-Trust Fund dollars. Because of this, the Committee considered potential ways to implement an equivalent increase in benefits through a separate funding stream, an increase in the maximum weekly benefit, the creation of a minimum weekly benefit, future changes to the weekly benefit formula, or some combination of those measures. Each option considered is discussed in greater detail below.

The Committee reviewed potential options for decreasing unemployment insurance contributions by roughly $100 million over 10 years and creating a surcharge that raises a corresponding amount that would be directed to a special fund that could be used, at least in part, to provide the increased benefits. ADD MORE BASED ON DISCUSSION

In addition to examining their impact on the stability of the mainframe system, the Committee considered how creating a minimum benefit amount might impact claimants differently than an increase in the maximum weekly benefit. A minimum benefit amount would effectively increase the wage replacement rates for those claimants who are at the lowest income level and entitled to the smallest weekly benefit.[24] In contrast, increasing the maximum weekly benefit would provide

[23] *See* Appendix 5: 50 State Summary of UI Benefit Rates for more information.
[24] An individual must earn at least $4,199.00 in their base period to qualify for unemployment insurance benefits. As a practical matter, most claimants earned significantly more during their base period.

additional benefits to claimants with significantly higher earnings during their base period.[25] Other considerations examined by the Committee were the number of claimants who might be impacted by the creation of a minimum benefit versus an increase in the maximum benefit and the potential implications of providing wage replacement rates near or above 100 percent for the lowest-wage claimants.

[Projections and Discussion Re: Impacts on Claimants]

Putting aside current mainframe issues, changing the underlying weekly benefit formula could provide additional benefits to claimants without requiring the creation of either a separate funding stream, the creation of a minimum benefit, or an increase in the maximum weekly benefit. Given the current constraints of the mainframe, such an option would need to be implemented as a part of or following its replacement with a modern IT system. The primary option considered by the Committee was the creation of a progressive weekly benefit formula in which the rate of wage replacement would decrease as a claimant's base period wages reached certain thresholds.[26] For example, a claimant's base period wages could be replaced at 65 percent up to a specific wage level, and wages above that amount could be replaced at 55 percent until the claimant reached the maximum weekly benefit amount. This model would provide additional wage replacement for claimants with lesser means and could then gradually reduce wage replacement for claimants who had higher base period wages and are therefore entitled to a higher weekly benefit.

DISCUSSION

VI. Potential Waiver or Reduction of a Period of Disqualification

21 V.S.A. § 1347(e) provides that the Commissioner of Labor shall impose a period of disqualification of up to 26 weeks against any individual who received benefits because the individual "intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits." During that period, the individual "shall be disqualified and shall not be entitled to receive benefits to which he or she would otherwise be entitled."[27] The statute provides no authority for the Commissioner to waive or reduce this period of disqualification. Moreover, in 2012, language providing that a period of disqualification would expire "after three years from the date [of the determination] or the date of the final decision on an appeal from such determination" was repealed.[28]

In examining the practices of other states, the Committee did not find any examples of other states that provide authority for a discretionary waiver or reduction of a period of disqualification. However, it did find examples of states in which the period of disqualification expires after a certain period.[29]

Discussion

[25] Assuming no fluctuation in quarterly earnings, this works out to an annual wage of more than $52,000.00.
[26] *See* Appendix 6: Progressive Unemployment Benefits Structure: Explanation and Examples.
[27] 21 V.S.A. § 1347(e).
[28] *See* 2012 Acts and Resolves, No. 162, § E.401.2.
[29] *See*, *e.g.*, Ga. Code Ann. § 34-8-255(a)(4) and 8 R.I. Gen. Laws Ann. § 28-44-24(a).

VII. Potential Waiver or Reduction of Liability for an Overpayment

21 V.S.A. §1347(c) requires an individual who has received an overpayment of unemployment insurance benefits to repay that amount to the Commissioner. 21 V.S.A. § 1347(d) permits the Commissioner to "withhold, in whole or in part, any future benefits payable to" an individual who has received an overpayment. The statute does not provide authority to the Commissioner to waive or reduce the amount of an overpayment that an individual is liable to repay.

The Committee found that many, though not all, states provide authority to waive or reduce the amount that an individual is liable to repay when the individual is without fault. The states that provide this authority also often require a finding that repayment of the benefits would be against equity and good conscience before an individual's liability may be reduced or waived.

Discussion

VIII. Nonprofit Reimbursable Employers

Pursuant to 26 U.S.C. §§ 3304(6) and 3309, the State is required to provide unemployment insurance coverage to the employees of nonprofit organizations with four or more employees. In addition, pursuant to § 3309(a), the State must provide the organizations with the right to elect to reimburse the Trust Fund for the amounts of unemployment compensation that are attributable to the organization in lieu of paying regular contributions. A state may also elect to cover nonprofit organizations with fewer than four employees, but Vermont does not do so.

Vermont law requires a covered nonprofit organization that elects to become a reimbursable employer to reimburse the Trust Fund in "an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of" the organization.[30] Each organization that has elected to become a reimbursable employer is billed by the Department at the end of each quarter for the benefits that are attributed to it in that quarter.[31] A nonprofit reimbursable employer may petition the Commissioner for permission to pay a percentage of its payroll in each calendar quarter plus an additional amount at the end of the year equal to the amount by which the payments are less than the amount of the benefits attributable to that employer. If the payments exceed the amount of benefits attributable to the employer for the year, the excess may be refunded or credited against the payments due for the next calendar year.[32] A reimbursable employer is liable for all benefits paid that cannot be charged to another employer, "including benefits paid but denied on appeal or benefits paid in error."[33] Benefits that are improperly paid that the Commissioner orders the claimant to repay "will be credited to the [reimbursable] employer's account when repayment . . . is actually received by the Commissioner."[34]

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[30] 21 V.S.A. § 1321(c)(2).
[31] 21 V.S.A. § 1321(c)(3).
[32] 21 V.S.A. § 1321(c)(3)(B)(iv).
[33] 21 V.S.A. § 1321(f).
[34] *Id*.

The Committee considered two issues related to nonprofit reimbursable employers. The first are instances where the employer was not the cause of the claimant's unemployment but had paid wages to the claimant during the base period. Depending on the length of the unemployment claim, this could result in significant liability for the reimbursable employer.

The second issue considered by the Committee was whether all nonprofit organizations should be covered by Vermont's unemployment insurance law. In recent years, the General Assembly has heard from several employees who were unaware that the wages they were earning from a small nonprofit employer would not qualify them for unemployment insurance benefits. In some instances, the employer had four or more employees when the individual began working for them but later decreased its workforce, and the individual was unable to use wages earned from the nonprofit to establish a claim or determine a weekly benefit amount. In other instances, individuals were simply unaware that the nonprofit employer was too small to be covered by the unemployment insurance law.

With respect to this issue, the Committee discussed two possible options. The first is to require nonprofit employers with three or fewer employees to notify current and new employees that their wages would not make them eligible for unemployment compensation. The Department of Labor testified that such a requirement would be difficult to enforce because it does not track nonprofit employers with fewer than four employees and such employers are not required to register with the Department.

The second option is to extend coverage to all nonprofit employers, regardless of the number of employees. [Additional Discussion]

The second issue considered by the Committee was potential ways to mitigate the impact on reimbursable employers when they paid wages to a claimant during the claimant's base period, but they were not the cause of the claimant's unemployment. One potential solution examined by the Committee was to change the way that Vermont charges benefits to employers for purposes of experience rating and reimbursement. Vermont currently charges benefits to employers in proportion to the amount of wages the employer paid to the claimant during the claimant's base period. While this is the most common model among states, some states charge benefits to the most recent employer or in inverse chronological order.

Discussion

Report of the Unemployment Insurance Study Committee

Representative Emilie Kornheiser, Chair	*Senator Christopher Pearson, Vice Chair*
Representative Michael Marcotte	*Senator Michael Sirotkin*

Appendix 1: 2021 Acts and Resolves No. 51, Section 14a

Sec. 14a. UNEMPLOYMENT INSURANCE; TRUST FUND; BENEFITS; PENALTIES; REIMBURSABLE EMPLOYERS; STUDY COMMITTEE; REPORT

(a) Creation. There is created the Unemployment Insurance Study Committee to examine the solvency of Vermont's Unemployment Insurance Trust Fund, its benefit structure, potential grants of authority for the Commissioner of Labor to reduce or waive certain penalties, and potential measures to mitigate the liability of reimbursable employers for some benefit charges.

(b) Membership. The Committee shall be composed of the following four members:

(1) one current member of the House Committee on Commerce and Economic Development, who shall be appointed by the Speaker of the House;

(2) one current member of the House Committee on Ways and Means, who shall be appointed by the Speaker of the House;

(3) one current member of the Senate Committee on Economic Development, Housing and General Affairs, who shall be appointed by the Committee on Committees; and

(4) one current member of the Senate Committee on Finance, who shall be appointed by the Committee on Committees.

(c) Powers and duties.

(1) 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;

(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.

(2) 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;

(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.

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Counsel, the Office of Legislative Operations, and the Joint Fiscal Office.

(e) Report. 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.

(f) Meetings.

(1) The Speaker of the House shall call the first meeting of the Committee to occur on or before September 15, 2021.

(2) The Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Committee shall cease to exist on December 31, 2021.

(g) Compensation and reimbursement. For attendance at meetings during adjournment of the General Assembly, a legislative member of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than 3 meetings. These payments shall be made from monies appropriated to the General Assembly.

Appendix 2: Witness List

- Michael Harrington, Commissioner, Department of Labor
- Cameron Wood, Director, Unemployment Insurance Division, Department of Labor
- John Quinn, Secretary, Agency of Digital Services
- Shawn Nailor, Deputy Secretary, Agency of Digital Services
- Kelli Kazmarski, Staff Attorney, Vermont Legal Aid
- Morgan Webster, Executive Director, Common Good Vermont
- Emma Paradis, Program Associate, Common Good Vermont
- Joyce Manchester, Senior Economist, Joint Fiscal Office
- Damien Leonard, Legislative Counsel, Office of Legislative Council

Staff for the Study Committee

- Damien Leonard, Legislative Counsel, Office of Legislative Counsel
- Joyce Manchester, Senior Economist, Joint Fiscal Office
- Michael Ferrant, Director of Legislative Operations
- Phil Petty, Committee Assistant

Appendix 3: The Feasibility of Changing the Unemployment Insurance Mainframe Program

Appendix 4: Vermont Unemployment Insurance Trust Fund: Data and Options

Appendix 5: 50 State Summary of UI Benefit Rates

State	UI Benefit Rate	Minimum	Maximum	Max % of SAWW	Dependent Benefit?
VT	1/45 of wages in two high quarters of base period	$81.00	$583.00	57%	N/A
AL	1/26 of average wages paid to individual during two high quarters of base period § 25-4-72(b)	$45.00. Individuals with WBA amount below $45.00 are not entitled to receive benefits. § 25-4-72(b)(2)	$275.00 § 25-4-72(b)(5)	N/A	N/A
AK		$56.00	$370.00	N/A	$24.00/dependent; $72.00 max for 3 dependents
AZ	1/25 of wages in high quarter of base period	$190.00	$240.00	N/A	N/A
AR	1/26 of average wages paid to individual during four quarters of base period	$81.00	$451.00	66.67%	N/A
CA	1/23-1/26 of wages in high quarter of base period	$40.00	$450.00	N/A	N/A
CO	• 60% of wages in high quarter of base period; or • 50% of wages in high	$25.00	$590.00 or $649.00	50-55% of SAWW depending on benefit formula	N/A

State	UI Benefit Rate	Minimum	Maximum	Max % of SAWW	Dependent Benefit?
	quarter of base period				
CT	1/26 of average wages during two high quarters of base period plus dependent allowance	$15.00	$667.00	60%	$15.00/dependent; $75.00 max for 5 dependents
DE	1/46 of wage in two high quarters of base period	$20.00	$400.00	N/A	N/A
DC	1/26 of wages in high quarter of base period	$50.00	$444.00	50%	N/A
FL	1/26 of wages in high quarter of base period	$32.00	$275.00	N/A	N/A
GA	1/42 of wages in two high quarters of base period	$55.00	$365.00	N/A	N/A
HI	1/21 of wages in high quarter of base period	$5.00	$639.00	70%	N/A
ID	1/26 of wages in high quarter of base period	$72.00	$463.00	55%	N/A
IL	47% x wages in 2 high quarters of base period divided by 26	$51.00	$505.00	64.7%	• 17.6% of AWW or $26.00, whichever is greater, for dependent child up to $185.00 • 9% of AWW or $15.00, whichever is greater, for dependent spouse up to $93.00
IN	47% of AWW in base period	$37.00	$390.00	N/A	N/A
IA	1/19-1/23 of wages in high quarter of base period	$73.00	$493.00	53-65% depending on # of dependents	• $4.00-$30.00/dependent depending on WBA and number of dependents; max of 4 dependents

State	UI Benefit Rate	Minimum	Maximum	Max % of SAWW	Dependent Benefit?
					• Formula for WBA amount changes depending on number of dependents from 1/23 of HQW for 0 dependents to 1/19 of HQW for 4 dependents. • Max WBA also increases depending on # of dependents from 53% of SAWW for 0 dependents to 65% of SAWW for 4 dependents
KS	4.25% of wages in high quarter of base period	$125.00	$503.00	55%	N/A
KY	1.1923% of base period wages	$39.00	$569.00	62%	N/A
LA	1/25 of average wages of four quarters	$10.00	$247.00	66.67%	N/A
ME	1/22 of average wages in two high quarters of base period	$80.00	$511.00	52%	$10.00/dependent; max of $255/week or 50% of WBA, whichever is less
MD	1/24 of wages in high quarter of base period plus dependent allowance	$50.00	$430.00	N/A	$8.00/dependent; max of $40.00 for 5 dependents
MA	• 1/13 of wages in high quarter of base period • 1/21-1/26 of wages in high quarter of base period	$103.00	$855.00	57.5%	$25.00/dependent; capped at 50% of WBA ($427.00)
MI	4.1% of wages in high quarter of base period	$150.00	$362.00	N/A	$6.00/ dependent; max of $30 for 5 dependents

State	UI Benefit Rate	Minimum	Maximum	Max % of SAWW	Dependent Benefit?
MN	Greater of: • 50% of 1/13 of wages in high quarter of base period up to 42% of SAWW; or • 50% of base period wages up to 66.67% of SAWW	$29.00	$491.00 or $762.00	66.67%	N/A
MS	1/26 of wages in high quarter of base period	$30.00	$235.00	N/A	N/A
MO	4.0% of wages in high quarter of base period	$35.00	$320.00	N/A	N/A
MT	• 1.9% of wages in two high quarters of base period; or • 1.0% of total base period wages	$169.00	$572.00	66.5%-67.5% depending on tax schedule.	N/A
NE	50% of average weekly wage of high quarter of base period	$70.00	$456.00	50%	N/A
NV	1/25 of wages in high quarter of base period	$16.00	$483.00	50%	N/A
NH	0.8-1.1% of annual wages	$100.00	$427.00	N/A	N/A
NJ	60% of AWW during base period	$132.00	$731.00	56.67%	7% of WBA for 1st dependent; 4% for each additional dependent; max of $93.00; WBA +

State	UI Benefit Rate	Minimum	Maximum	Max % of SAWW	Dependent Benefit?
					dependency allowance cannot exceed max WBA
NM	53.5% of AWW in high quarter of base period	$90.00	$484.00	53.5%	$25.00/dependent; max of $50.00 for 2 dependents
NY	1/26 of wages in high quarter of base period	$108.00	$504.00	N/A	N/A
NC	Last 2 quarters of base period divided by 52	$15.00	$350.00	N/A	N/A
ND	1/65 of wages in two high quarters of base period	$43.00	$640.00	• 62%; or • if avg. contribution rate paid by employers is below national avg., 65%	N/A
OH	50% of AWW during base period plus dependent allowance	$140.00	$498.00	50-66.67% depending on # of dependents	Dependents increase max WBA. (50% of AWW for 0; 60% of AWW for 1-2; and 66.67% for 3+); max dependent allowance is $174.00.
OK	1/23 of wages in high quarter of base period	$16.00	$461.00	Depending on condition of fund: • $520; or • 50-60%	N/A
OR	1.25% of base period wages	$157.00	$673.00	64%	N/A
PA	1/24-1/25 of wages in high quarter of base period plus dependent allowance	$68.00	$583.00	66.67%	$5.00 for 1st dependent, $3.00 for up to 1 additional dependent; max of $8.00
RI	3.85% of the average of the total wages in two high	$59.00	$661.00	57.5%	Greater of $15.00 or 5% of WBA for each child; max of $165.00 for 5 children

State	UI Benefit Rate	Minimum	Maximum	Max % of SAWW	Dependent Benefit?
	quarters of base period				
SC	1/26 of wages in high quarter of base period	$42.00	$326.00	66.67%	N/A
SD	1/26 of wages in high quarter of base period	$28.00	$428.00	50%	N/A
TN	1/52 of wages in two high quarters of base period	$30.00	$275.00	N/A	N/A
TX	1/25 of wages in high quarter of base period	$70.00	$535.00	47.6%	N/A
UT	1/26 of wages in high quarter of base period minus $5.00	$35.00	$617.00	62.5%[35]- $5.00	N/A
VA	1/50 of wages in two high quarters of base period	$60.00	$378.00	N/A	N/A
WA	3.85% of wages in two high quarters of base period	$201.00	$844.00	63%	N/A
WV	55% of 1/52 of median wages in worker's wage class	$24.00	$424.00	66.67%	N/A
WI	4.0% of wages in high quarter of base period	$54.00	$370.00	N/A	N/A
WY	4.0% of wages in high quarter of base period	$38.00	$526.00	55%	N/A

[35] Percentage of insured average weekly wages.

Appendix 6: Progressive Unemployment Benefits Structure: Explanation and Examples

Current Unemployment Benefits Formula in Vermont

- Two highest quarters in base period divided by 45 (roughly 57.7% of claimant's average weekly wage)
- Maximum benefit is $583.00 (57% of State Average Weekly Wage for previous year ending May 31)
- Wage replacement is flat for all claimants up to the maximum weekly benefit

Progressive Unemployment Benefits Formula

- Wage replacement rate varies depending on claimant's income with greater wage replacement for lower incomes
- Similar concept to progressive tax rates in which individuals with higher income are taxed at a greater rate than individuals with lower income
- Basic example:
    - Claimant's base period wages up to X are replaced at 65% and wages above X are replaced at 55%.
    - Can include maximum and minimum weekly benefits to further increase wage replacement for the lowest income claimants and to further decrease it for the highest income claimants.

Two Proposals for Progressive Unemployment Benefits Structures

Economic Policy Institute:

Wage Amount	Replacement Rate	Minimum/Maximum Benefit	Range of Benefits
Up to 50% of SAWW (~$511.00)	85%	$307.00 (minimum)	$307.00-$434.00
51-100% of SAWW	70%	N/A	$435.00-$793.00
Over 100% of SAWW	50%	$1533.00	$794.00-$1533.00

Proposal is available at: https://www.epi.org/publication/section-5-benefit-levels-increase-ui-benefits-to-levels-working-families-can-survive-on/

Arindrajit Dube[36]

Wage Amount	Replacement Rate	Minimum/Maximum Benefit	Range of Benefits
Up to $400.00	80%	$230.00 (~20% of US AWW in 2020)	$230.00-$320.00
$401.00-$700.00	65%	N/A	$321.00-$515.00
Over $701.00	50%	$910.00 (~80% of US AWW in 2020)	$515.00-$910.00

Proposal is available at: https://www.hamiltonproject.org/assets/files/Unemplyment_InsurancePP_v4.2.pdf

[36] Proposal amounts are based on 2020 U.S. Average Weekly Wage.

Appendix 7:

Appendix 8: