SB 391

Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 391 (Senator Feldman, *et al.*)

Finance Economic Matters

Civilian Federal Employees – Unemployment Insurance Benefits and Federal Government Shutdown Employee Assistance Loan Fund (Federal Shutdown Paycheck Protection Act)

This emergency bill ensures that, subject to a series of contingencies based on possible federal determinations, all civilian federal employees who are required to report to work and are not being paid because the federal government is in a full or partial shutdown due to a lapse in appropriations have access to either unemployment insurance (UI) benefits or a no-interest loan program. **Contingent provisions take effect on the date notice of receipt of a specific federal determination letter is received by the Department of Legislative Services (DLS).**

Fiscal Summary

State Effect: General fund expenditures increase by $111,500 in FY 2019, about $195,000 annually in FY 2020 and 2021, and about $95,000 annually thereafter, as discussed below. General fund expenditures, special fund revenues, and special fund expenditures may increase in any year that there is a federal government shutdown.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
SF Revenue	$0	-	-	-	-
GF Expenditure	$111,500	$201,000	$187,200	$93,500	$96,700
SF Expenditure	$0	-	-	-	-
Net Effect	($111,500)	($201,000)	($187,200)	($93,500)	($96,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Unemployment Insurance Trust Fund (UITF) Effect: There is no effect on UITF, as discussed below.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Contingencies

The bill has two substantive provisions, which become effective contingent on various determinations by the U.S. Department of Labor (USDOL) through January 1, 2024.

- *Contingency One:* Maryland's UI law is amended so that an individual who is a civilian employee of the federal government is eligible to receive UI benefits if the employee (1) is required to report to work at a work site located in the State and (2) is not being paid because the federal government is in a full or partial shutdown due to a lapse in appropriations.

- *Contingency Two:* The Federal Government Shutdown Employee Assistance Loan Fund is established and is administered by the Department of Labor, Licensing, and Regulation (DLLR) to provide no-interest loans to civilian employees of the federal government who are (1) required to report to work at a work site located in the State and (2) not being paid because of a full or partial federal government shutdown due to a lapse in appropriations. The Governor is authorized, but not required, to transfer money from the Catastrophic Event Account to the fund.

Generally, if confirmation from USDOL is received stating that Contingency One conforms to federal law, then those provisions go into effect and Contingency Two provisions are null and void. Conversely, if Contingency One is determined to not conform to federal law, then Contingency Two goes into effect.

Through January 1, 2024, if there is a change to federal law, or if federal guidance changes, DLLR must request a subsequent determination on Contingency One's conformance. If at that point Contingency One is determined to conform with federal law, then Contingency One goes into effect (Contingency Two is not null and void under a subsequent determination).

Determinations received from USDOL by DLLR must be forwarded to DLS within 24 hours. The relevant contingency takes effect when notice is received by DLS.

Federal Government Shutdown Employee Assistance Loan Fund

Subject to the above contingencies, the Federal Government Shutdown Employee Assistance Loan Fund is established and is administered by DLLR. The fund must only be used to provide no-interest loans to civilian federal employees who are (1) required to report to work at a work site located in the State and (2) not being paid because of a full or partial federal government shutdown due to a lapse in appropriations. DLLR must establish procedures and eligibility criteria for loans from the fund, as specified, such as repayment timelines.

In addition to funds appropriated in the State budget and other sources, the fund consists of (1) money transferred from the Catastrophic Event Account and (2) repayments on loans made from the fund. The purposes for which the Catastrophic Event Account may be used are expanded to include a full or partial federal government shutdown due to lapse in appropriations, and the Governor is authorized, after a two-day review and comment period by the Legislative Policy Committee (LPC), to transfer funds by budget amendment from the account to the fund.

Current Law/Background:

Unemployment Insurance – Generally

UI provides temporary, partial wage replacement benefits to individuals who are unemployed through no fault of their own and who are willing to work, able to work, and actively seeking employment. Both the federal and state governments have responsibilities for UI programs. Funding for the program is provided by employers through UI taxes paid to both the federal government for administrative and other expenses and to the states for deposit in their UI trust funds. Using federal tax revenues, the UI program is administered pursuant to state law by state employees. Each state law prescribes the tax structure, qualifying requirements, benefit levels, and disqualification provisions. These laws must, however, conform to broad federal guidelines.

Eligibility for Unemployment Insurance

Generally, to be eligible for UI benefits an individual must be able to work, available for work, and actively seeking work. There are several caveats to these general requirements. For example, when an employer closes for inventory, vacation, or another purpose that will cause unemployment for a definite period of up to 10 weeks, the Secretary of Labor, Licensing, and Regulation may exempt affected employees from the general UI eligibility requirement to actively seek work during that period if the Secretary finds that circumstances and labor market conditions justify the exemption. There are specified limitations. As reaffirmed in a recent USDOL letter, during a federal government shutdown, generally, furloughed workers are eligible to receive UI benefits, while those working without pay are not. From the letter:

> Pursuant to Federal and state UI requirements, because these individuals [working without pay] continue to provide full-time services, they are not

> generally considered unemployed/furloughed for Federal or state law purposes. States are cautioned that Federal funding for administrative costs or any unemployment benefits paid by the states to such workers will be unavailable. States should not use Federal funds for this purpose and should not expect Federal reimbursement or assistance with regard to recovering any benefit payments when the lapse in appropriations ends.

The Recent Federal Government Shutdown and Affected Workers in Maryland

Funding for several federal departments and agencies lapsed on December 21, 2018. Funding was temporarily restored on January 25, 2019, for three weeks – through February 15. According to data from the Office of Personnel Management, there are about 129,000 federal civilian Executive Branch jobs located in Maryland, excluding the Postal Service and classified agencies. Employment at departments and agencies affected by the recent shutdown totaled almost 43,000.

Nationally, about half of the 800,000 federal employees impacted by the shutdown were furloughed, while the rest continued to work without pay for safety or security reasons. Whether that ratio between furloughed and working without pay was representative of the situation in Maryland is unknown at this time. Federal employees who were required to work during the recent shutdown were guaranteed to get paid for the time they worked. The U.S. Congress passed and the President signed legislation to pay furloughed federal employees for the shutdown period when it ended.

Catastrophic Event Account

The Catastrophic Event Account was established in 1990 to enable the State to respond quickly to a natural disaster or catastrophe that could not be addressed within existing State appropriations. Funds appropriated to the account may not be used to offset operating deficiencies in regular programs of State government but may be expended to assist a unit of State government in funding costs in connection with a natural disaster or catastrophic situation. The Governor may transfer funds from the account to an appropriate unit of State government after a 15-day review and comment period by LPC. The fund balance has typically ranged from about $1.0 million to $8.0 million; the fiscal 2019 beginning balance was about $5.0 million.

State Fiscal Effect: Based on recent USDOL determinations, this analysis assumes that Contingency Two – which establishes a no-interest loan fund – takes effect in fiscal 2019.

Implementation Costs

DLLR advises that it requires one full-time staff, two contractual full-time staff during the implementation phase, and relatively modest information technology expenses to implement the no-interest loan fund/program. This analysis assumes general funds are used for these costs, as federal funds cannot be used, and that implementation begins April 1, 2019.

Accordingly, general fund expenditures increase by $111,534 in fiscal 2019, which accounts for the bill being an emergency measure. This estimate reflects the cost of hiring one full-time permanent program administrator, one full-time contractual assistant Attorney General, and one full-time contractual administrative staff to oversee the initial implementation and ongoing oversight of the no-interest loan fund/program. It includes salaries, fringe benefits, one-time start-up costs, information technology costs, and ongoing operating expenses.

Permanent Position	1.0
Contractual Positions	2.0
Salaries and Fringe Benefits	$46,395
Information Technology Expense	50,000
Other Operating Expenses	15,139
Total FY 2019 State Expenditures	**$111,534**

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses and the elimination of contractual positions after fiscal 2021. Fiscal 2020 expenditures also include $20,000 for informational materials.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

As the federal government is funded through September 30, 2019, some or all of these costs may be delayed until the start of fiscal 2020, at the Governor's discretion.

Loan Administration

DLLR intends to enter into an agreement with a loan servicer to administer the loans and handle repayments in the event of a federal government shutdown, at an estimated cost of $200 per loan. During the most recent federal government shutdown, which lasted 35 days, DLLR paid UI benefits to about 1,500 federal civilian workers, totaling $2.0 million. Nationally, about half of federal civilian workers were eligible for UI benefits during the shutdown, while the other half were ineligible due the reasons addressed by the bill (*i.e.*, they were working without pay). Therefore, a no-interest loan program could reasonably be expected to provide about the same amount of funding as UI during a similar shutdown. The federal government is funded through September 30, 2019; a full or partial shutdown cannot occur until at least fiscal 2020.

Under these assumptions, about $2.3 million is required during a significant shutdown, beginning no earlier than fiscal 2020. Assuming the Governor transfers funds from the Catastrophic Event Account as authorized, special fund expenditures from that account increase by $2.3 million, with general funds being expended, as necessary, to replenish the Catastrophic Event Account. Special fund revenues increase correspondingly to reflect the transfer from the Catastrophic Event Account to the Federal Government Shutdown Employee Assistance Loan Fund. Special fund expenditures increase to provide no-interest loans to federal employees working without pay during the shutdown, and special fund revenues increase as those loans are repaid. The actual amounts and timing cannot be predicted.

Other Contingencies

If Contingency One initially takes effect, State finances and operations are not affected. If Contingency One takes effect subsequent to Contingency Two taking effect (due to a future change in federal law or guidance, after an initial unfavorable determination), then the no-interest loan fund/program established under Contingency Two remains in effect. Under this scenario, the bill does not preclude an individual from receiving both UI benefits and a no-interest loan – although DLLR could conceivably establish criteria that prohibit such an outcome.

UITF Effect: Contingency One does not take effect unless USDOL determines that Maryland UI law conforms to federal UI program requirements. If that is the case, then the workers "authorized" to receive UI benefits under that contingency *would be eligible regardless of whether or not the contingency goes into effect*. In other words, as drafted, Contingency One only goes into effect if it is a clarifying change to incorporate federal law or guidance. Contingency Two is established for the specific purpose of not using UITF. Therefore, the bill – under either contingency – does not affect UITF revenues or expenditures.

Additional Information

Prior Introductions: None.

Cross File: HB 336 (Delegate Feldmark, *et al.*) **-** Economic Matters.

Information Source(s): Department of Labor, Licensing, and Regulation; U.S. Department of Labor; U.S. Office of Personnel Management; Department of Legislative Services

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