SB 811

Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 811 (Senator Hershey, *et al.*)
Finance Economic Matters

Unemployment Insurance – Computation of Earned Rate of Contribution – Applicable Table of Rates

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This emergency bill requires the Governor, based on the availability of qualified federal funds and notwithstanding any other provision of law, for fiscal 2022, to include in the annual budget bill an appropriation of funds toward replenishment of the Unemployment Insurance Trust Fund (UITF) in an amount sufficient to result in Table C applying in calendar 2022. The appropriation may be used for administrative costs, including the repayment of federal funds. Additionally, notwithstanding any other law, the bill requires Table C to apply in calendar 2023. **The bill terminates December 31, 2023.**

Fiscal Summary

State Effect: The Maryland Department of Labor (MDL) can handle the bill's requirements with existing budgeted resources and/or other available federal funds. Federal funds totaling $1.1 billion are allocated to UITF instead of other eligible purposes in FY 2022 due to the transfer specified in the bill. Nonbudgeted UITF revenues increase correspondingly. However, nonbudgeted UITF revenues also decrease by about $700 million in total from mid-FY 2022 through mid-FY 2024 due to the bill's direct tax table changes in calendar 2022 and 2023, and likely further decrease from mid-FY 2024 through mid-FY 2025 due to the interaction with a State requirement to meet federal solvency goals, as discussed below. General fund expenditures for interest payments potentially decrease in FY 2022 and/or 2023. Nonbudgeted UITF expenditures are affected only to the extent that available funds affect the amount and timing of UITF loan repayments and are used for other administrative costs.

Local Effect: None. Local governments reimburse UITF dollar for dollar and are unaffected by rate table changes.

Small Business Effect: Meaningful.

Analysis

Current Law: Use of Table C generally requires about $800 million to $900 million in UITF balance as of September 30 of the prior calendar year. For a discussion of employer taxes under various rate tables, including the estimated fund balances required to move to each table, please see the **Appendix – Unemployment Insurance**.

State Fiscal Effect:

Administration Intends to Allocate $1.1 Billion in Federal Stimulus Funds to UITF

At a joint press conference with the President of the Senate and the Speaker of the House, on March 31, 2021, the Governor announced that $1.1 billion in federal funds available to the State under the American Rescue Plan Act of 2021 (ARPA) would be allocated for Maryland's UITF. MDL estimates revenue from Table F contributions in calendar 2021 at approximately $863 million, after adjusting for the provision in Chapter 39 of 2021 ("The RELIEF Act") that allows for the noncharging of pandemic claims. With the infusion of $1.1 billion in ARPA federal funds, MDL estimates that the department will be able to pay off its loan, resulting in a year-end balance of approximately $894 million, and trigger use of Table C for calendar 2022.

Assuming the Governor provides the funding as specified, federal funds totaling $1.1 billion are allocated to UITF instead of other eligible purposes in fiscal 2022.

Unemployment Insurance Trust Fund – Revenues

Under current law, the State is in Table F in calendar 2021, and will be in Table F in calendar 2022 and likely in calendar 2023. Assuming the Governor provides the funding as specified (the Governor has announced an amount of $1.1 billion), the bill moves the State to Table C in calendar 2022 and 2023 instead. The effect on UITF for the duration of the bill is a function of the following:

- federal funds appropriated to UITF in fiscal 2022 under the bill ($1.1 billion); and
- UITF revenue reductions in calendar 2022 and 2023 due to Table C being in effect instead of Table F (about $350 million each year, although there is significant uncertainty).

Under those estimates, UITF will be in an approximately $400 million better position at the end of calendar 2023 than it would have been absent the bill.

Even though the bill terminates December 31, 2023, the move to Table C in calendar 2023 likely also affects future tax table determinations – particularly, the calendar 2024 tax table.

Under current State law, there are two fund balance requirements, with different determination dates, as shown below. The State cannot move to a tax table with lower rates unless both fund balance requirements are met. In practical terms, the federal funding goal is, at a minimum, $1.5 billion, and is likely to be more than that amount once calendar 2020 benefit payments are incorporated into the goal. Table A otherwise applies at about $1.0 billion. **To be clear, under current law, the State is in Table F in calendar 2021, and will remain in Table F until the federal solvency funding goal is met and the State moves to Table A; there will be no intermediary tables along the way.**

	2022 Table	2023 Table	2024 Table	2025 Table	2026 Table
General State Date	9/30/21	9/30/22	9/30/23	9/30/24	9/30/25
Federal Solvency Goal Date	12/31/20	12/31/21	12/31/22	12/31/23	12/31/24

For the calendar 2024 tax table determination, unless UITF has a fund balance sufficient to meet the federal solvency goal as of December 31, 2022, the calendar 2023 tax table will *continue* to be the table with the lowest range of rates allowable. Under the bill, that is Table C; without the bill, that is almost certainly Table F. That calculation will continue each year until the federal funding goal is met and the State moves to Table A – likely no earlier than calendar 2025 under either current law or the bill.

The Department of Legislative Services notes it is *possible* the UITF balance could be sufficiently low (less than $800 million) on September 30, 2023, that Table D, E, or F could apply in calendar 2024 – but that would depend on claims volume. If this were to occur, then the appropriate table (D, E, or F) would be the one with the lowest range of rates allowable until the federal solvency goal is met as the provision only allows for movement in one direction – to higher tax rates.

Unemployment Insurance Trust Fund – Expenditures

Nonbudgeted UITF expenditures are affected only to the extent that available funds affect the amount and timing of UITF loan repayments and are used for other administrative costs, although the magnitude and timing are unknown.

Interest Payments

Absent the cash infusion under the bill, MDL may have begun to accrue interest on borrowed funds beginning in early September 2021; interest is due each November and must be paid with general funds or other State funds. Therefore, general fund expenditures for interest payments potentially decrease in fiscal 2022 and/or 2023.

Small Business Effect: Generally, small businesses pay lower State UI taxes in calendar 2022, 2023, and likely 2024. The effect on most small businesses is meaningful, particularly in the short term. See the appendix for the range of rates most employers pay under each tax table; with most businesses paying near the bottom of the range of rates, moving from Table F ($187 per employee) to Table C ($85 per employee) saves each business about $100 per employee per year. Another way to consider the small business effect is that employers are ultimately responsible for replenishing UITF – the bill results in $1.1 billion in federal funds replacing what would have otherwise eventually been recouped through UI taxes collected from employers. Still, not all businesses pay UI taxes based on the table of rates. For example, new employers pay a fixed rate, currently 2.6%, which is not affected by the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; Department of Legislative Services

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Appendix – Unemployment Insurance

Program Overview

Unemployment Insurance (UI) provides temporary, partial wage replacement benefits of up to $430 per week 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. Generally, 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. The Maryland Department of Labor's Division of Unemployment Insurance administers the State's UI program.

Each state law prescribes the tax structure, qualifying requirements, benefit levels, and disqualification provisions. These laws must, however, conform to broad federal guidelines.

Employer Contributions

Most Maryland employers pay State UI taxes, although State and local governments and some nonprofit organizations reimburse the Unemployment Insurance Trust Fund (UITF) for claims paid in lieu of paying taxes. Therefore, for most Maryland employers, the State UI tax rate is a function of:

- the employer's specific unemployment claims history; and
- the applicable tax table, which is based on the State's UITF balance and applies to most taxable employers.

Exhibit 1 shows the range of State UI taxes a typical employer owes based on the tax table in effect; there are other rates for new employers and in other limited circumstances. State UI taxes and reimbursements are typically due quarterly; however, Chapter 39 of 2021 allows employers with fewer than 50 employees to defer 2021 State UI tax payments or reimbursements until January 31, 2022, and authorizes the Secretary of Labor to offer a similar deferment in 2022. The Act, in conjunction with a recent executive order, also generally prevents UI claims made during the COVID-19 pandemic from increasing an employer's taxes – although Table F, with its broadly higher rates, is in effect in 2021.

Exhibit 1
Tax Tables and Applicable Employer Tax Rates

	As of Sept. 30, if the Trust Fund Balance, As a Percentage of Taxable Wages		Trust Fund Balance ($ in Millions)		Then Next Year's Tax Rates Range from…			Annual Tax Per Employee (Rate x $8,500)		
Tax Table	**Exceeds**	**Up to**	**Exceeds**	**Up to**	**No Claims**	**Single Claim**	**Up to**	**No Claims**	**Single Claim**	**Up to**
A	5.00%	N/A	$995.8	N/A	0.30%	0.60%	7.50%	$25.50	$51.00	$637.50
B	4.50%	5.00%	896.2	$995.8	0.60%	0.90%	9.00%	51.00	76.50	765.00
C	4.00%	4.50%	796.6	896.2	1.00%	1.50%	10.50%	85.00	127.50	892.50
D	3.50%	4.00%	697.1	796.6	1.40%	2.10%	11.80%	119.00	178.50	1,003.00
E	3.00%	3.50%	597.5	697.1	1.80%	2.60%	12.90%	153.00	221.00	1,096.50
F	0.00%	3.00%	0.0	597.5	2.20%	3.10%	13.50%	187.00	263.50	1,147.50

Notes: Fund balance threshold dollar amounts are based on the 2020 taxable wage base and are subject to change each year. A "single claim" represents the tax rate applicable to the lowest possible rate associated with nonzero (.0001 to .0027) benefit ratios. Taxes are applied to the first $8,500 earned by each employee, each year; compensation less than that amount reduces taxes owed accordingly. Table F is in effect in 2021 and is likely to be in effect for at least two more years; Table A had been in effect since 2016.

Source: Department of Legislative Services

Benefit Payments

Generally, the weekly benefit amount a claimant is eligible for is based on the quarterly wages that the claimant was paid for covered employment in the calendar quarter of the claimant's base period in which those wages were highest. The base period is the first four of the last five completed calendar quarters immediately preceding the start of the benefit year, or, if the individual does not qualify under that definition, the four most recently completed calendar quarters immediately preceding the start of the benefit year.

Weekly benefit amounts range from $50 to $430 per week, based on earnings in the base period. There is also a dependent allowance of $8 per dependent, for up to five dependents, although the allowance cannot raise the weekly benefit amount above $430. The first $50 of any wages earned by an individual receiving UI benefits in a given week is disregarded for purposes of calculating the weekly benefit amount, after which the benefit payment is reduced dollar for dollar. These amounts do not adjust for inflation. Generally, during a benefit year, a claimant is entitled to 26 times the claimant's weekly benefit amount. During periods of high unemployment, extended benefits may also be available.