

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 802 (Delegate Doory)
(Committee on Unemployment Insurance Oversight)

Economic Matters

Finance

Unemployment Insurance - Special Administrative Expense Fund

This bill expands the authorized uses of the Unemployment Insurance Special Administrative Expense Fund (SAEF) and requires an annual report beginning December 31, 2007 to the Governor, the Senate Budget and Taxation and Finance committees, and the House Appropriations and Economic Matters committees. The report must include SAEF's financial status and a summary of activity along with a description of all projects receiving money from the fund.

The bill is effective July 1, 2006.

Fiscal Summary

State Effect: Potential significant increase in SAEF expenditures and corresponding decrease in general fund reversions resulting from expanded use of the fund.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The Secretary of Labor, Licensing, and Regulation may use the SAEF for administrative expenses for the unemployment insurance program. Administrative expenses are defined to include: (1) acquisition of office space, subject to approval of the Board of Public Works; (2) costs of furnishing, maintenance, repair, improvement, and

enhancement of office space; (3) purchase, lease, and maintenance of information technology systems and services; (4) purchase, lease, maintenance of telecommunication systems and services; or (5) other administrative costs that the Secretary determines are necessary to administer the unemployment insurance program.

Current Law: SAEF consists of money appropriated in the State budget from fines, interest, and other penalties collected under the unemployment insurance law. Any balance in excess of \$250,000 at fiscal year end is transferred to the State general fund. The Department of Labor, Licensing, and Regulation (DLLR) may use the SAEF for several purposes: (1) for reimbursement of interest on contributions collected in error; (2) for cost of administration that have been improperly charged to federal funds; (3) to replace money the State receives under the Social Security Act that has been lost or used for purposes other than, or in amounts exceeding, those necessary for administration of the unemployment insurance fund; or (4) to acquire office space. The fund may not be used in a manner that would result in the loss of federal funds available to pay for administrative expenses.

Background: In a June 2002 report, the Office of Legislative Audits (OLA) found that DLLR had improper special fund expenditures of \$4.7 million from SAEF. SAEF revenue is derived primarily from fines, interest, and penalties collected by the department's Unemployment Insurance Administration. State law requires that the funds be used for unemployment insurance expenses and any balance in the fund in excess of \$250,000 at year end must revert to general fund. Instead of reverting the funds, DLLR used them for various expenditures that OLA determined were normal operating expenditures, such as for telecommunications, and concluded that DLLR could be required to reimburse the general fund for the \$4.7 million. DLLR objected to this finding on the basis that it relied on legal advice that SAEF funds could be used for any purpose authorized by the General Assembly. DLLR stated that the amounts in question had been identified in budget bill documentation or were included in budget amendments that resulted from shortages of federal funding.

Because it was part of a group of longstanding audit issues, the Department of Legislative Services' (DLS) final recommendation, which the budget committees adopted, was that DLLR would not be required to reimburse the general fund for the improper use of SAEF money. However, in the same letter, the committees noted that there was confusion about the proper and improper uses of SAEF money. DLLR and DLS interpreted the law differently; however, both arrived at their interpretations based on consultation with counsel. At the request of DLLR and DLS, the Attorney General reviewed the law and issued an opinion regarding the proper use of Special Administrative Expense Funds.

In an opinion issued November 3, 2004 (89 *Opinions of the Attorney General* 172 (2004)), the Attorney General stated, “SAEF funds may be used for the various administrative purposes set forth in the SAEF statute. Neither the budget bill nor a budget amendment may expand those purposes. Among the purposes listed in the SAEF statute is the acquisition of space used for the administration of the Unemployment Insurance Law. While there is no specific provision in the SAEF statute that allows for the payment from the fund of costs related to occupancy, such as utilities, maintenance, and security, in some circumstances these costs may be considered part of the cost of acquisition. Money in SAEF may not be devoted to a use not allowed by the SAEF statute, such as operational expenses, unless the General Assembly passes a law permitting that use.”

The opinion goes on to state that “The General Assembly has specified those purposes [for using SAEF money] in the Unemployment Insurance Law. The appropriation of moneys from the SAEF in the budget bill is limited to those purposes. Of course, the General Assembly may expand those purposes in separate legislation. And, to the extent that the SAEF statute is ambiguous, language in the budget bill may shed light on the meaning of that statute.”

State Fiscal Effect: DLLR advises that this bill will have no effect on State finances. DLS disagrees with this assessment. As this bill expands the authorized uses of the special fund, it is likely that those funds will be used for those additional purposes and little, if anything will be reverted to the general fund in the future. DLS assumes, in the absence of the bill, that SAEF fund reversions would continue in the trend shown in the chart below, increasing as revenues increase and current authorized expenditures being limited by the Attorney General opinion.

<u>Fiscal Year</u>	<u>Revenue (\$ in millions)</u>	<u>Expenditure (\$ in millions)</u>	<u>Reversion to General Fund</u>
2003	\$3.2	\$3.2	\$25,001
2004	3.1	3.0	197,189
2005	4.0	3.7	312,761
2006 est.	3.4	3.4	
2007 allow.	4.2	4.2	

While future year actual expenditures and ensuing general fund reversions cannot be reliably estimated at this time, it is estimated that expenditures from the fund will increase and reversions will cease or significantly decrease. DLLR has indicated that it

has every intention of annual revenues matching annual expenditures so as no money will revert to the general fund in the future.

Additional Information

Prior Introductions: None.

Cross File: SB 585 (Senator Middleton, *et al.*) (Committee on Unemployment Insurance Oversight) – Finance.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

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