Report of the
Legislative Budget Committee
to the
Legislative Coordinating Council

Chairperson: Senator Rick Billinger

Vice-Chairperson: Representative Troy Waymaster

Other Members: Senators J.R. Claeys and Tom Hawk; Representatives Will Carpenter, Kyle Hoffman, and Kathy Wolfe-Moore

Charge

The Committee is charged with reviewing reports and certifications of the dollar amount of improper payments from the unemployment insurance system and recommending to the Legislative Coordinating Council an amount to transfer from the Legislature Employment Security Fund to the Employment Security Fund of the Department of Labor.

December 2022
Recommendations:

While the Committee has received the audit on improper payments that have occurred with the Unemployment Trust Fund, it is the determination of the Committee that of the second tranche of $250.0 million allocated through 2021 Senate Sub. for Sub. for HB 2196, a transfer of $107.9 million is necessary to further replenish unemployment insurance funds impacted by the public health emergency and to meet the intended purposes of the American Rescue Plan Act (ARPA) – Coronavirus State and Local Fiscal Recovery Fund (SLFRF) as established in the U.S. Treasury. As stated in U.S. Department of the Treasury’s Final Rule dated January 27, 2022:

In the final rule, Treasury is maintaining the inclusion of this eligible use category. Because unemployment insurance trust funds directly fund benefits to unemployed workers, maintaining the solvency of the trust fund is critical to the continued provision of assistance to unemployed workers. Further, funds deposited into the trust fund must be used as assistance to unemployed workers, an eligible use of SLFRF funds. Finally, while, in the absence of the SLFRF, trust fund deposits would likely be funded through increases on employer payroll taxes, the eligibility of uses of SLFRF funds does not depend on how obligations would otherwise be satisfied if the SLFRF were not available for this use.

This funding is critical for the ongoing recovery from the public health pandemic, support of those who are or will become unemployed, and mitigating any additional tax burdens on Kansas employers as they recover from the economic downturn associated with the COVID-19 pandemic.

Proposed Legislation: None.

BACKGROUND

Section 1 of 2021 Senate Sub. for Sub. for HB 2196 (HB 2196) requires the Unemployment Compensation Modernization and Improvement Council (Council) to select an independent firm to conduct an audit examining the effects on the Department of Labor and the unemployment insurance system of fraudulent claims and improper payments from March 15, 2020, to March 31, 2022. (KSA 2022 Supp. 44-771)

Section 6 of HB 2196 (KSA 2022 Supp. 75-5745) requires the Council to report the dollar amount of improper payments determined by the audit provided for in Section 1 to the Division of the Budget. The statute also authorizes the Legislative Coordinating Council to authorize transfer of funds from the Legislature Employment Security Fund to the Employment Security Fund of the Department of Labor, upon recommendation from the Legislative Budget Committee (Committee). The amount transferred may not exceed the certified improper payment amount.

HB 2196 Section 6 further provides for a transfer of funds from the Legislature Employment Security Fund to the Employment Security Fund of the Department of Labor on the basis of the amount of improper payments made from April 1, 2022, through December 31, 2022, as determined by the Secretary of Labor.
Unemployment Compensation
Modernization and Improvement Council

The Council selected FORVIS to conduct the audit and received a report from FORVIS at a meeting held on September 7, 2022 (Attachment A). The Council requested certain additional information from FORVIS necessary to determine the dollar amount of improper payments and received this information at a meeting held on September 19, 2022 (Attachment B).

The Council concluded the audit of the Department of Labor had determined the amount of improper payments from the Employment Security Fund from March 15, 2020, to March 31, 2022, to be $358.0 million.

The Council also noted $250.0 million of federal coronavirus relief aid had been transferred to the Employment Security Fund and recommended an additional $108.0 million of federal coronavirus relief aid be transferred to the fund.

The Council further recommended an additional $20.0 million of federal coronavirus relief aid be retained for a future transfer to the Employment Security Fund to account for improper payments occurring from April 1, 2022, to December 31, 2022. The exact amount of this transfer would be certified by the Secretary of Labor at a later date.

The Council reported its conclusions to the Division of the Budget on September 19, 2022.

Division of the Budget

The Director of the Budget certified $357.9 million identified as improper payments by the audit and reported that amount to the Legislative Coordinating Council on November 28, 2022 (Attachment C).

That amount includes $292.0 million in net improper payment estimates (Attachment B) and $65.9 million in non-fraud overpayments (Attachment A). The Director of the Budget noted the $65.9 million in non-fraud overpayments were not all paid from the Employee Security Fund and that the impact on the State’s trust fund would likely be less than that amount.

COMMITTEE ACTIVITIES

As part of its meeting on December 19, 2022, the Committee received an update on the certified improper payment amount from the Director of Legislative Research (Director). The Director provided an overview of HB 2196 and the amount certified by the Director of the Budget. The Director noted that, of the $357.9 million total, $250.0 million of federal coronavirus relief aid had already been transferred to the Department of Labor Employment Security Fund, leaving an amount up to $107.9 million for the Committee to take action on.

Responding to questions from the Committee, the Director indicated the Department of Labor Employment Security Fund had a balance between $1.0 billion and $1.1 billion as of the date of that meeting.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommended the transfer of $107.9 million from the Legislature Employment Security Fund to the Employment Security Fund of the Department of Labor.