

Members

Rep. David Niezgodski, Chairperson
Rep. Russ Stilwell
Rep. Daniel Leonard
Sen. Brandt Hershman
Sen. Greg Walker
Sen. Karen Tallian
John Griffin
Nancy Guyott
Craig Severns
Steve Schreckengast
Joshua Richardson



UNEMPLOYMENT INSURANCE OVERSIGHT COMMITTEE

LSA Staff:

Peggy Piety, Attorney for the Committee
Susan Montgomery, Attorney for the Committee
Chuck Mayfield, Fiscal Analyst for the Committee

Authority: IC 2-5-30

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

MEETING MINUTES¹

Meeting Date: September 9, 2009
Meeting Time: 11:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. David Niezgodski, Chairperson; Rep. Russ Stilwell; Rep. Daniel Leonard; Sen. Brandt Hershman; Sen. Greg Walker; Sen. Karen Tallian; John Griffin; Nancy Guyott; Craig Severns; Joshua Richardson.

Members Absent: None.

Representative David Niezgodski, Chairperson, called the meeting to order at 11:10 a.m. with the Pledge of Allegiance. Committee members introduced themselves. The Committee briefly reviewed the Legislative Council's policies governing study committees and the topics assigned to the Committee.

Reports from the Department of Workforce Development (DWD)

(A) Indiana Unemployment Insurance Board (Board) Annual Report

Joshua Richardson, DWD Director of Government Affairs, reported that the Board's latest annual report is being prepared, and the Committee will receive the report when it is available. The report will include information about the solvency of the unemployment insurance benefit fund (Fund). Representative Niezgodski requested that the Board's report be presented to the Committee this interim. Mr. Richardson said that the most recent report concerning the Fund's solvency is DWD's December 2008, letter. He will provide copies of the letter to the Committee.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

(B) Status Report as to Fund Solvency and Advances Obtained from the Federal Unemployment Account

Mr. Richardson reviewed the history of the Fund's balance from 1990 to the present (Exhibit 1, pages 1-5). He noted that the Fund's balance has been declining since 2000, before the current economic downturn. Indiana's federal drawdown as of September 3, 2009, is \$1.12 billion. Indiana's federal advances are projected to total \$1.7 billion by the end of 2009.

Mr. Richardson presented information about the 17 states currently receiving federal advances in order to pay unemployment insurance benefits. The current total of the advances is \$14.4 billion. He noted that the federal account paying the advances is out of money even as state borrowing needs are steadily growing. Mr. Griffin asked for information about the states that are not currently borrowing, including information about tax rates and taxable wage base for each state.

Mr. Richardson then compared Indiana's current unemployment tax system to the 2010 changes enacted in HEA 1379 (P.L.175-2009). Currently, Indiana has 24 separate rates, four schedules, and rates ranging from 1.1% to 5.6% of the first \$7,000 in wages. In 2010, Indiana will have 28 separate rates, nine schedules, and rates ranging from 0.7% to 12.0% for the first \$9,500 in wages. Mr. Richardson compared Indiana's 2010 rates to the rates of Michigan, Ohio, Illinois, and Kentucky. All of these states are currently borrowing from the federal account, but none of them have passed legislation yet (as Indiana has) in an attempt to increase the solvency of their trust funds.

The federal American Recovery and Reinvestment Act (ARRA) has waived state interest payments through the end of 2010 on amounts borrowed from the federal account. Interest will accrue on amounts not repaid by September 2011.

In response to a question from Senator Hershman, Mr. Richardson discussed how projections have changed since HEA 1379 passed. DWD has prepared a comparison of the changes in the forecast and will provide that information to the Committee. Mr. Richardson described the changes as "massive". \$535 million in additional claims have been paid over the amounts forecast for the first three quarters of 2009. In addition, Global Insight, the firm providing revenue forecasts to the state, has reduced its revenue projections for the state three times since December 2008. Those projections are based in part on unemployment data.

(C) Implementation of HEA 1379 (P.L.175-2009)

(1) Policy Updates

Mr. Richardson reported that, as part of the implementation of HEA 1379, DWD has issued several updated policies, including those concerning gross misconduct, drug testing, attendance rules, "able & available" for work, and work search.

(2) ALJ Training (Exhibit 1, pages 20-21)

DWD has developed a two day training session for administrative law judges (ALJ). The training covers DWD's updated policies, decision writing, a review of recent Indiana court decisions, rules of evidence, information about federal quality standards for judges and ALJs, including rules of conduct, trial officer demeanor, attitude, bias and prejudice, introduction of exhibits, and order of testimony. Mr. Richardson agreed to provide copies of the ALJ training materials to the Committee.

In response to a question from Senator Tallian, Mr. Richardson discussed the differences

between an ALJ and an adjudicator. An ALJ is usually an attorney. DWD is determining which issues must be heard by an ALJ and which issues can be handled by an adjudicator.

(3) Compliance Center

Mr. Richardson discussed DWD's implementation of a compliance center under IC 22-4-17-2. The federal Department of Labor (DOL) has indicated that it may find the state out of compliance with federal law depending upon how DWD establishes the compliance center. DWD is working on implementing this provision in a way that carries out legislative intent and also maintains the state's compliance. In response to a question from Senator Tallian, Mr. Richardson agreed to provide copies of DOL written correspondence that describes how this provision may take the state out of compliance with federal law. In response to a question from Senator Hershman, Mr. Richardson said that he would characterize the DOL communication as a warning or an advisory rather than an opinion or a finding. DOL provides Unemployment Insurance Program Letters, information about other states' practices, and other training materials to help states comply with federal law.

Representative Niezgodski asked about other states' unemployment insurance programs, especially Nebraska's. Representative Niezgodski understands that Nebraska successfully revised its unemployment insurance program a few years ago when facing a situation similar to the one in which Indiana finds itself.

Mr. Richardson reported that DOL has also expressed concerns about the voluntary buydown provisions in HEA 1379 that allow certain debit employers to receive a credit in the employer's experience account equal to two and one-half times the amount the employers voluntarily contribute to the Fund.

Indiana's Workforce Investment System

Gina DelSanto, PhD, Senior Deputy of Policy and Performance, DWD, discussed the organization and operation of the state's workforce investment system (System) (Exhibit 1, pages 11-19). The System has two objectives: (1) job search assistance; and (2) occupational skills training.

(A) Workforce Investment Act of 1996; State Workforce Innovation Council

The federal Workforce Investment Act of 1996 (WIA) established the System, authorized the state board and the local system, and enumerated the duties, permissions, and limitations of both the state board and the local system. Under WIA, the state is required to establish a state board to direct and manage the state's workforce activities conducted under various federal laws, including WIA, Carl D. Perkins Vocational and Applied Technology Act, and Adult Basic Education. In Indiana, the state board is called the State Workforce Innovation Council (SWIC).

(B) Workforce Service Areas; Workforce Investment Boards

WIA Section 106 requires the Governor to establish local service areas called workforce service areas (WSA). The factors used by the Governor to determine the state WSAs include demographics, workforce needs, and educational components. WIA also allows cities of more than 500,000 in population to become independent WSAs. In Indiana, Indianapolis-Marion County is an independent WSA with the balance of the state being the second WSA. Each WSA is governed by a Workforce Investment Board (WIB)/Local Board that directs and manages the WSA's activities. In Marion County, the WIB is the Indianapolis Private Industry

Council (IPIC). In 2005, the state received a waiver from DOL that allows the SWIC to function both as the state board and as the WIB for the balance of the state WSA.

(C) Regional Workforce System

In 2005, state legislation (IC 22-4 and IC 22-4.5) established the regional workforce system. The purpose of the regional system is to have more commonality in the state's workforce system while allowing for regional inflections or variations. The regional system consists of eleven regional workforce areas designated within the balance of the state WSA. Each regional workforce area is overseen by a regional workforce board (RWB). The RWB develops and manages a regional plan for the provision of workforce services and training within the regional workforce area, identifies and vets providers of services and training, and reports on its activities and performance to the SWIC/WIB. The federal government has not recognized the state's regional system.

The RWBs operate the state's WorkOne Centers. The Centers provide both job search assistance and occupational skills training. Job search assistance includes labor market information, job search correspondence, and interviewing skills. Occupational skills training includes non-credit certificates (primarily offered by non-accredited proprietary schools; examples: CDL, welding, cosmetology); credit-based certificates (offered by accredited institutions, such as Ivy Tech); associates degrees (occupationally driven with credentialing leading to a job; examples: RN, LPN, computer programming); on-the-job training; and incumbent worker training.

Dr. DeSanto testified that most worker training in Indiana is delivered using individualized training accounts. On-the-job training is underutilized in the state. The SWIC is looking at encouraging more employer directed training. Employers may be eligible for up to a 50% wage subsidy for up to six months for providing occupational training. However, many employers are unaware of this program, so more outreach to employers is needed.

(D) Committee Questions

In response to a question from Representative Stilwell, Dr. DeSanto described the WSA system in place before 2005. The state had 14 to 16 WSAs, each having a WIB that was independent of any other WIB. Each WIB was self-sustaining and received money from the state according to a formula. There was a lack of consistency in the delivery of programs and services among the WIBs.

Dr. DeSanto identified the number one impediment to the success of the current System as finding a way to inspire Indiana residents to undertake training. The state has enough resources to handle the increased training demand, if more residents are inspired to take training.

In response to a question from Mr. Griffin, Dr. DeSanto said that she doesn't know whether the regional system has improved the delivery of services and programs, because there is no pre-2005 system data for comparison purposes. Her charge is to improve the System's structure and to develop metrics to measure the System's efficiency and effectiveness on a going-forward basis.

In response to a question from Representative Niezgodski, Dr. DeSanto said that there are currently about 20 service providers in the state, including youth service providers and other providers.

In response to a question from Senator Walker, Dr. DeSanto discussed further the metrics

that might be used to measure the System's performance. Dr. DeSanto is not certain that DOL's current metrics are the most effective ones. For example, instead of looking at the percentage of workers who are reemployed, certain aspects of the worker's old and new jobs might be compared, such as the wages paid. Another measure might be a worker's persistence and attainment in a training program, rather than just measuring a worker's entry into a training program. Also, the current metrics don't measure whether a worker's training led to the job for which the worker trained. Another measurement factor might be the cost per individual for training.

Operation of the Unemployment Insurance Benefit System

(A) Type and Funding Source of Benefits Paid

Mr. Richardson discussed the operation of the state's unemployment insurance benefit system (Exhibit 1, pages 6-10). He outlined the unemployment benefits currently authorized and their funding sources. An unemployed worker may qualify for up to 79 weeks of benefits authorized and funded as follows:

- (1) 26 weeks of unemployment compensation paid by the state.
- (2) An additional 33 weeks of emergency unemployment compensation (including up to 13 weeks paid because Indiana is a "high unemployment state") paid until December 2009 by the federal government.
- (3) An additional 20 weeks of state-federal extended benefits (triggered when unemployment exceeds certain levels) normally funded 50-50 by the state and federal government, but 100% federally funded from February 17, 2009, through December 31, 2009.

An individual receiving extended benefits must take any job that pays at least minimum wage. The trigger for extended benefits is the state average unemployment rate, not regional rates.

(B) Application for Benefits

Mr. Richardson then outlined the steps an individual must take in order to qualify and maintain eligibility for unemployment benefits. He also distributed a booklet, Resource Guide for the Unemployed (Exhibit 2), that explains the process. Within one week following separation from employment, an individual must open a claim for benefits online. Notice of the claim is sent to the individual's separating and base period employers. Next, DWD makes a monetary determination (based on the individual's length of employment and wages earned) as to whether an individual qualifies for benefits, and investigates any potentially disqualifying information. Finally, DWD makes a non-monetary determination as to the individual's eligibility for benefits. For 90% of applicants, this process is completed within 21 days.

An individual who receives benefits is required to file a weekly voucher to maintain eligibility for benefits. The voucher: (1) lists any hours worked and wages earned; (2) certifies the individual's ability and availability for work; and (3) reports on the individual's job search. HEA 1379 requires that the job search of an individual laid off more than 59 days or without a specific recall date include applying for at least one open position each week. The job search requirement (including the requirement to apply for one job) is waived for a week during which an individual is: (1) job-attached and laid off for less than 60 days; (2) using a referral service; or (3) enrolled in DWD approved training.

(C) Committee Questions

In response to a question from Mr. Griffin, Mr. Richardson testified that about 65% of the applicants for benefits are monetarily eligible. He does not know the percentage of unemployed individuals who apply for benefits.

Representative Niezgodski questioned the requirement of applying for an open job and expressed concern that counties with high unemployment rates may not have enough open jobs for those who need to make an application. Mr. Richardson said that DWD audits compliance with the requirement through its online job search site, CareerConnect.com, for those who apply through that site. DWD also conducts random audits of employers for other applications.

Senator Tallian asked whether individuals have had problems completing the online claim for benefits. Mr. Richardson acknowledged that there have been problems, but that individuals may receive help with the process at WorkOne Centers.

In response to questions from the Committee, Mr. Richardson discussed the treatment of severance and vacation pay in determining an individual's eligibility for benefits. Committee members commented on the current lack of consistency in DWD's treatment of these amounts and the need for clearer definitions of these terms.

In response to a question from Representative Niezgodski, Mr. Richardson said that an individual complies with the option to use a union hiring or referral service by showing that the individual is a union member in good standing. The question of what a union needs to provide in order to show that its service is a legitimate work search service was raised.

DOL Monitoring Report, dated March 9, 2009, Concerning DOL's Review of DWD's Workforce Programs (Exhibit 3)

Mr. Richardson discussed DWD's response to the 41 deficiencies described in Exhibit 3, particularly issues concerning individuals receiving unemployment benefits when not registered for work, the provision of youth services, and Board vacancies. He said that DWD had sent a written response to DOL and that he would provide copies of the response to the Committee.

DWD Report, dated August 11, 2009, Concerning the Unemployment Insurance Modernization Provisions of the ARRA (Exhibit 4)

Representative Stilwell asked DWD to take another look at the available options so that the state can use the \$148 million available under the ARRA.

Mr. Griffin joined Representative Stilwell in asking DWD to find a way to access the federal money. He also asked for information concerning the assumptions that DWD made in preparing Exhibit 4 and which borrowing states are enacting the ARRA modernization changes. He requested that someone from DWD attend the next Committee meeting to discuss Commissioner Voors' determination to turn down the money. Mr. Richardson agreed to provide information on these topics.

DOL Training and Employment Guidance Letter (TEGL) No. 2-09, dated August 26, 2009, Concerning Approved Training for the Unemployment Insurance Program (Exhibit 5)

Mr. Richardson discussed Exhibit 5, which outlines the kind of training adequate to waive job search requirements. He said that although Exhibit 5 was issued very recently and DWD is still reviewing it, DWD is already doing many of the things mentioned in the letter. DWD has a pretty quick turnaround time on approving training. Ms. Guyott asked when DWD will complete its review of the TEGL.

DOL Unemployment Insurance Program Letter (UIPL) No. 43-09, dated August 21, 2009,

Concerning Best Practices for Payment of Unemployment Compensation by Debit Card (Exhibit 1, pages 22-23; Exhibit 6)

Mr. Richardson noted that 31 states, including Indiana, use debit cards to pay unemployment benefits. He discussed the state's compliance with the recommendations made in the UIPL. Individuals may transfer the debit card balance to a bank account electronically. "Point of sale" transactions using a debit card never incur a fee, plus the cash back option does not incur a fee. The state doesn't have a wallet-sized card listing all fees associated with its debit card, but this is an interesting idea. Individuals: (1) can check debit card balances online; (2) are allowed two free balance inquiries per week; and (3) are not charged an overdraft fee. An individual is entitled to one free withdrawal from an in-network ATM a week. There are over 1100 in-network ATMs (Money Pass) in the state. The Committee requests a map showing the geographic location of the in-network ATMs.

Public Testimony Concerning Assigned Topics and Meeting Agenda Items

Fred Merritt, a small business owner from Fort Wayne, requested that the state devote more resources to enforcement. No one returns calls; no one answers emails. He's been billed for former employees who lost unemployment benefit claim appeals. He's also concerned that it's easy for a company with a high debit balance to close and start up under another name. He also is aware of significant inconsistencies in ALJ decisions between counties. Mr. Merritt also asked for increased recovery of benefit overpayments and suggested that employers have the ability to respond to claim notices online to reduce the number of overpayments that occur.

Senator Hershman responded that HEA 1379 tried to address these issues and also strike a balance between employer and the employee interests.

Committee Discussion of Assigned Topics and Meeting Agenda Items

Representative Stilwell requested that DWD provide the Committee with a list of legislative changes needed to implement HEA 1379 or as the result of policy changes made after the enactment of HEA 1379.

Senator Tallian suggested several topics for later Committee meetings. She asked for information concerning the cost of implementing each of the four ARRA unemployment insurance modernization options. She also asked for information concerning the process for an unemployment insurance claim that is denied or challenged. She understands that a huge backlog of ALJ cases exists and asks for a status report on the ALJ cases.

Representative Leonard suggested two topics that are tied into the Fund's deficit for Committee discussion. The first topic is the annualization of wages. Annualizing wages would address regularly reoccurring layoffs that are built into some businesses' operating models. The second topic is worker classification. There are already some laws in place to take care of the problem of workers who are actually employees being hired as independent contractors and maybe not paying for unemployment, worker's compensation, and other costs.

Ms. Guyott questioned how non-attorneys can serve as ALJs. She requested information about the ALJ staffing tables, including how many positions are not filled. She asked whether DWD needs additional resources to adequately staff the claims appeal process.

Next Meeting Date

Representative Niezgodski announced that the Committee's next meeting is scheduled for

Tuesday, September 29, 2009, at 11:00 a.m.. He has requested Room 404 in the State House for the meeting.

Adjournment

The meeting was adjourned at 2:50 p.m.