Legislative Analysis

Mitchell Bean, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

UNEMPLOYMENT INSURANCE: IMPLEMENT FEDERAL "MODERNIZATION" PROVISIONS FROM RECOVERY ACT

House Bill 4785 (Substitute H-1)
Sponsor: Rep. Richard Hammel

House Bill 4786
Sponsor: Rep. Bert Johnson
Committee: Labor

Complete to 4-15-09

A SUMMARY OF HOUSE BILL 4785 (H-1) AND HOUSE BILL 4786 AS INTRODUCED 4-2-09

The bills would enact amendments to the Michigan Employment Security Act to (1) provide unemployment benefits to individuals who are available for, and seeking, only part-time work, and (2) provide extended benefits to individuals who exhaust regular benefits and are enrolled in an approved job training program. Enactment of these provisions would enable the state to receive $138.9 million in additional federal funding made available under the federal American Reinvestment and Recovery Act of 2009.

BRIEF SUMMARY:

House Bill 4785 (Training Benefits)
The bill provides up to an additional 26 weeks of UI benefits to individuals who exhaust regular benefits (up to 26 weeks) during the time period the individual is enrolled, and satisfactorily completing, an approved job training program, including programs authorized under the federal Workforce Investment Act, PL 105-220. The training program must prepare workers for entry into a high-demand occupation, following separation from a declining occupation or an involuntary and indefinite separation from employment due to permanent reductions in operations by the employer. The training benefits would not be provided if the individual is receiving a similar stipend or other training allowance for nontraining costs, or if the individual is entitled to UI benefits under any other federal UI program or the federal-state extended compensation program, or if the individual is entitled to establish a new claim for regular benefits.

MCL 421.27 and 421.28

House Bill 4786 (Part-Time Work)
The bill provides that for benefit years beginning after January 1, 2011, if a majority of weeks in an individual's base period include part-time work, an otherwise eligible individual would not be denied benefits for any week solely because the individual is (1) available only for part-time work; (2) seeking only part-time work; or (3) refuses an offer of full-time work.

The bill provides that, during an individual's base period, "part-time work" means work that is less than 40 hours per week. During an individual's benefit year, "part-time work" means

work that is not less than 16 hours per week and not more than 40 hours per week, and that is comparable to the number of hours of work per week in a majority of the weeks of work during the base period.

The bill further states than an individual would continue to be ineligible for benefits if he or she voluntary separates from part-time employment without good cause attributable to the employer.

MCL 421.28

FISCAL IMPACT:

The bills are intended to enact two of four possible amendments to the Michigan Employment Security Act necessary for the state to receive the final two-thirds of its portion of $7.0 billion made available to states under the American Recovery and Reinvestment Act for "modernizing" their UI laws. The federal Department of Labor - Employment and Training Administration (DOL-ETA) has indicated that Michigan's share for enacting these provisions is $138,455,561. This "two-thirds" payment is made available to states that have first enacted changes implementing an alternate base period and have received approval from the DOL-ETA. While the state law has for several years included a provision providing for an alternate base period (ABP), the Unemployment Insurance Agency has not yet submitted its application to DOL-ETA for that provision. The DOL-ETA must first certify the state's ABP provision before the state is eligible to receive the two-thirds payment. The state's share for adopting the alternate base period is $69,427,524. Presumably, the state's application is forthcoming.[1]

Under the Recovery Act, the funds received by the UIA for enacting these changes may only be used to provide UI benefits or, upon appropriation, for UI or employment service administrative costs.[2] The Unemployment Insurance Agency has not indicated how much will be used for benefits and how much, will be used for administrative costs (and for what purpose). Again, the funds used for administrative costs would be subject to appropriation by the Legislature. The Department of Labor notes that the modernization payments must be expended before the state may receive an advance (loan) under Title XII of the federal Social Security Act.[3]

---

[1] The DOL-ETA's Recovery Act website, [http://www.doleta.gov/recovery/], includes links to each state's "modernization" application. So far, South Dakota, Connecticut, and New Jersey are the only states that have applied for the one-third ABP payment, and only New Jersey has applied for the "two-thirds" payment. New Jersey has adopted the part-time work and training benefits provisions, just as these bills would.

[2] Employment services generally refer to the array of labor exchange programs authorized under the federal Wagner-Peyser Act, which are generally carried out by DELEG and the 25 Michigan Works! Agencies.

[3] See Section 1201 of the federal Social Security Act, 42 USC 1321. Title XII permits states to receive advances (loans) to pay unemployment benefits when the state unemployment trust fund does not have sufficient resources to pay such benefits. In general, though not always, these advances are interest-bearing. In the past few years, the state has on several occasions had to request Title XII advances from the Department of Labor. The Recovery Act provides that through December 2010, interest payable on Title XII advances is waived (completely, not simply deferred) and interest would not accrue on any additional advances made through December 2010. As of April 6, 2009, the state's outstanding loan balance was $1.87 billion. Michigan is one of 14 states, including Wisconsin, Indiana, and Ohio, with outstanding loan balances.

House Bill 4785 (Training Benefits)

The Unemployment Insurance Agency has indicated that enacting this change would increase expenditures from the state unemployment trust fund by, on the low end, approximately $52.5 million on an annual basis (based on CY 2008 figures). In the near-term, one limiting factor is a provision in the bill, consistent with Department of Labor guidance, that provides that the training benefits would not be provided if the individual is receiving a similar stipend (such as Trade Readjustment Assistance), or if the individual is entitled to UI benefits under any other federal UI program or the federal-state extended compensation program, or if the individual is entitled to establish a new claim for regular benefits. However, the continued receipt of extended UI benefits may provide sufficient income support to enable displaced workers to enter a training program and be eligible to receive, under the bill, additional weeks of UI benefits after exhausting other benefits, which has the potential to increase programmatic costs.[4]

The Michigan Employment Security Act provides that the cost of training benefits is paid from the nonchargeable benefits account (NBA). This account is a non-experience-rated account where the standard tax rate paid by contributing employers is 1.0% of taxable wages. As its name implies, the NBA used to pay the cost of UI benefits that are pooled among employers and not charged directly to a specific employer's experience account. (The more common example of this type of "non-chargeable benefits" includes the costs of UI benefits payable to employers that have gone out of business.) Charging benefits to the NBA has, in effect, no impact on contributing employers.

Additionally, the bills would have a direct cost impact on the state and local governmental units (including schools), tribal governments, and non-profit organizations that do not pay state unemployment taxes, but instead are "reimbursing employers" that reimburse the state unemployment trust fund, dollar-for-dollar, for the unemployment benefits (including regular benefits, extended benefits and training benefits), to former employees.[5] For the state, the act provides that the actual cost of benefits is charged to the employing state department against the funds available for the payment of salaries and wages. According to the Department of Labor, in 2008, 4% of benefits were paid out by reimbursing employers. If that percentage continues for the benefits paid under the bill, approximately $2.1 million would be paid by reimbursing employers.

House Bill 4786 (Part-Time Work)

The Unemployment Insurance Agency has indicated that enacting this change would increase expenditures from the state unemployment trust fund by, on the high end, approximately

[4] Title IV of PL 110-252 temporarily established the Emergency Unemployment Compensation (EUC08) program, providing up to an additional 13 weeks of UI benefits to individuals who exhaust their regular benefits. The program was expanded by PL 110-449 to provide an additional 7 weeks of extended benefits and, in states with high unemployment rates, an additional 13 weeks beyond the 20 weeks provided. The Recovery Act provides that benefits are available to individual who exhaust benefits before the end of 2009. (Individuals receiving EUC09 at the end of the year are still eligible to receive the remaining benefits payable to them.) EB benefits are established in permanent law by the Federal-State Extended Unemployment Compensation Act. The program provides 13 weeks of extended benefits to individuals in states with high unemployment rates. The state triggered "on" for EB benefits at the end of January. When SB 399, HB 4668, and HB 4669 are enacted, the state will adopt an alternate EB trigger that temporarily provides an additional seven weeks of benefits. Under the Recovery Act the EB benefits will be financed 100% by the federal government through the end of 2009.

[5] See Sections 13, 13g, and 13k, and 20 of the Michigan Employment Security Act.

$17.2 million on an annual basis. One factor that would serve to limit the amount of benefits payable, as provided in the bill, is a requirement that a majority of weeks of work in an individual's base period include part-time work and that the type of work a UI claimant is available for, and seeking, is comparable (in terms of hours) to the type of work in the majority of weeks of work in the base period. Another limiting factor is that because initial eligibility for UI benefits is based on an individual's earnings, it could be the case that individuals who receive UI benefits under the bill and later secure part-time employment may not be monetarily eligible for UI benefits in the future. Additionally, under the Michigan Employment Security Act, the earnings a UI claimant receives in a week reduce the individual's weekly benefit amount.[6] In general, individuals who work part-time receive less in UI benefits than similarly situated individuals who remain unemployed while seeking full-time employment.

The bill would have a direct cost impact on contributing employers. Under the Michigan Employment Security Act, the chargeable benefits component of a contributing employer's state unemployment tax is the amount of benefits paid out divided by the amount of taxable payroll, over the 60-month period ending on the previous June 30.

Additionally, the bill would have a direct cost impact on the state and local governmental units, tribal governments, and non-profit organizations that are "reimbursing employers" and reimburse the state unemployment trust fund, dollar-for-dollar, for the unemployment benefits paid to former employees. Again, for the state, the act provides that the actual cost of benefits is charged to the employing state department against the funds available for the payment of salaries and wages. The Department of Labor notes that, in 2008, 4% of benefits were paid out by reimbursing employers. If that percentage continues for the benefits paid under the bill, approximately $0.7 million would be paid by reimbursing employers.

DETAILED SUMMARY:

House Bill 4785 (Training Benefits)

The bill provides up to an additional 26 weeks of UI benefits to individuals who exhaust regular benefits (up to 26 weeks) during the time period the individual is enrolled, and satisfactorily completing, an approved job training program, including programs authorized under the federal Workforce Investment Act, PL 105-220.[7]

Under current law, up to 18 weeks of benefits *may* be provided to individuals with an unexpired benefit year who exhaust regular benefits and who are enrolled in a job training program approved by the UIA. The act provides that the UIA may authorize an individual with an unexpired benefit year to pursue vocational training or retraining only if it finds that[8]:

[6] Under Section 27 of the Michigan Employment Security Act (MCL 421.27), for every $1.00 a UI claimant earns in a week, the amount of UI benefits is reduced by $0.50. When the combined amount of benefits and earnings equal or exceed 150% of the weekly benefit amount, every $1.00 in earnings reduces UI benefits by $1.00.

[7] While the duration of benefits is often reported as being "up to 26 weeks," the actual number of weeks is based on earnings in the base period. The weekly benefit amount is calculated as 4.1% of the highest quarter of wages in the base period, plus $6 per dependent (up to 5). The maximum weekly benefit amount is $362. The duration of benefits is 43% of the base period wages, divided by the weekly benefit amount.

[8] An individual with an unexpired benefit year includes individuals receiving benefits as well as individuals who have exhausted to right to regular benefits. These provisions also apply to individuals receiving regular benefits and

1. Reasonably opportunities for employment in occupations for which the person has training and/or experience do not exist locally.
2. The vocational training course is related to an occupation or skill for which there currently are, or expected to be, reasonable employment opportunities (i.e. an "in-demand" occupation).
3. The training course has been approved by the UIA or the local workforce development board.
4. The individual has the required qualifications and aptitudes to complete the course successfully.
5. The training course is approved by the State Board of Education and is offered by a public or private school or the UIA.

The training benefits provision was added to the Michigan Employment Security Act with the enactment of 1965 PA 281. The Unemployment Insurance Agency has indicated that this provision has not been active for at least 25 years.

Under the bill, the training program must prepare workers for entry into a high-demand occupation, following separation from a declining occupation or following an involuntary and indefinite separation from employment due to permanent reductions in operations by the employer. The training benefits would not be provided if the individual is receiving a similar stipend or other training allowance for nontraining costs, or if the individual is entitled to UI benefits under any other federal UI program or the federal-state extended compensation program, or if the individual is entitled to establish a new claim for regular benefits.

House Bill 4786 (Part-Time Work)

The bill provides that for benefit years beginning after January 1, 2011, if a majority of weeks in an individual's base period include part-time work, an otherwise eligible individual would not be denied benefits for any week solely because the individual is (1) available only for part-time work; (2) seeking only part-time work; or (3) refuses an offer of full-time work.[9]

Section 28 of the Michigan Employment Security Act, MCL 421.28, currently provides that, as a condition of eligibility for UI benefits, an individual must be able and available to perform suitable *full-time* work that he or she, by training or past experience, is qualified to perform, that is similar to the individual's previous line of work, and that is available locally. Further, Section 29 of the MESA, MCL 421.29, provides that an individual is disqualified from receiving benefits if he or she fails without good cause to (1) apply for available

---

who receive a waiver from the work availability requirements by the UIA because they are enrolled in a job training program, as required by the Federal Unemployment Tax Act, 26 USC 3304. The waiver provision remains unchanged.

[9] By specifying the "part-time" provision applies to benefit years beginning after January 1, 2011, the bill essentially provides that it would first take into consideration the earnings and work patterns of UI claimants beginning in October 2009. As described in greater detail later, under the Michigan Employment Security Act, to be eligible for benefits, a claimant must meet certain wage requirements within the "base period." The standard base period is the first four of the last five completed calendar quarters. The act provides for an alternate base period that includes the last four completed calendar quarters.

suitable work after receive notice from an employment office or the UIA that work is available; or (2) accept a specific offer of suitable work.[10]

The bill provides that, during an individual's base period, "part-time work" means work that is less than 40 hours per week. During an individual's benefit year, "part-time work" means work that is not less than 16 hours per week and not more than 40 hours per week, and that is comparable to the number of hours of work per week in a majority of the weeks of work during the base period.

A base period is the time period used by the UIA in determining whether an individual meets the minimum wage requirements to be eligible for benefits. A benefit year is the 52-week period beginning when the individual files a claim for UI benefits. It includes the time period during which the individual would receive benefits.

The bill further states than an individual would continue to be ineligible for benefits if he or she voluntary separates from part-time employment without good cause attributable to the employer.

BACKGROUND INFORMATION:

The American Recovery and Reinvestment Act of 2009, PL 111-5 enacted several changes concerning the provision of unemployment insurance benefits to displaced workers.[11] Among these changes is the inclusion of a number of provisions aimed at encouraging states to "modernize" their unemployment insurance programs by increasing benefits and expanding eligibility. Given that the cost of these changes is borne by the states (financed through the imposition of unemployment taxes on employers), states were offered, in total, $7.0 billion to assist in the cost of funding these changes. These changes were previously encompassed in federal legislation known as the Unemployment Insurance Modernization Act (UIMA).[12]

Of the $7.0 billion provided to the states under the Recovery Act's UIMA provisions, one-third ($2.3 billion) is distributed to states that have a provision in their UI law allowing for an

[10] Section 29 provides that "suitable work" is determined by the UIA based on the risk involved to the individual's health, safety, and morals; the individual's physical fitness and prior training; the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and the distance of the available work for the individual's place of residence. Prior experience and earnings are also considered, although an individual could not refuse to accept an offer of suitable work where the wages are at least equal to 70% of prior earnings. The act specifically states that unsuitable work includes a vacancy created by a labor dispute, work where the wages and conditions are "substantially less favorable" than prior work, or work where an individual would be required to join or resign from a labor organization.

[11] See [http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR00001:|TOM:/bss/d111query.html]. The unemployment provisions are contained in Subtitle A (Unemployment Insurance) of Title II (Assistance for Unemployed Workers and Struggling Families) of Division B (Tax, Unemployment, Health, State Fiscal Relief, and Other Provisions). See, also, the Joint Explanatory Statement, [http://appropriations.house.gov/pdf/Recovery_JS_DivB.pdf], and *Unemployment Insurance Provisions in the American Recovery and Reinvestment Act of 2009*, Congressional Research Service, Report R40368 (February 27, 2009), [http://assets.opencrs.com/rpts/R40368_20080227.pdf].

[12] See HR 290, introduced by Rep. Jim McDermott (D-Washington, 7th). The text of the bill is available at, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h290ih.txt.pdf]. See, also, the September 19, 2007 hearing on "modernizing unemployment insurance to reduce barriers for jobless workers" by the House of Representatives, Ways and Means Committee, Subcommittee on Income Security and Family Support, [http://waysandmeans.house.gov/hearings.asp?formmode=detail&hearing=585].

"alternate base period" that counts the most recent completed calendar quarter when determining eligibility for UI benefits. All states use a "base period" (or "base year") to determine eligibility for UI benefits. The typical base period used by states is the first four of the last five completed calendar quarters. In order to be eligible for UI benefits, an individual must meet certain minimum wage requirements within the base period.[13] If a person does not have sufficient wages within the regular base period using either the regular earnings calculation or an alternate earnings calculation, both earnings calculations are applied to the alternate base period to determine eligibility. Michigan is one of about 20 states that currently provides for an alternate base period.[14] Because Michigan has already adopted an alternate base period it is slated to receive $69.4 million, upon application to and certification from the Department of Labor.

The remaining two-thirds ($4.7 billion) is distributed to states that have adopted the alternate base period and adopted state UI law provisions containing at least two of the following four provisions dealing with part-time work, compelling family reasons, dependent allowances, and training benefits.[15]

- **Part-Time Work:** Permits (former) part-time workers to retain UI eligibility if seeking part-time work.

  The Recovery Act provides that under this provision, "an individual shall not be denied regular unemployment any State law provisions relating to availability for work, active search for work, or refusal to accept work, solely because such individual is seeking only part-time work (as defined by the Secretary of Labor), except that the State law provisions carrying out this [provision] may exclude an individual if a majority of weeks of work in such individual's base period do not include part-time work (as so defined)."

---

[13] See Section 46 of the Michigan Employment Security Act, MCL 421.46, which provides that a benefit year shall not be established (i.e. a person is not eligible for benefits) unless the individual has, within the base period, wages (1) in at least 2 quarters; (2) in the high quarter at least equal to 388.06 multiplied by the state minimum wage ($7.15), or $2,871; and (3) in the entire base period equal to at least 1.5 multiplied by the wages in the high quarter. Alternatively, if a person does not meet the regular earnings calculation, a person may be eligible for benefits under an alternate earnings qualifier (AEQ) where the individual must have wages in at least two quarters in the base period and wages in the entire base period at least equal to the state average weekly wage multiplied by 20. For 2009, this calculation is based on a statewide average weekly rate of $834.79. Multiplied by 20, the minimum earnings requirement under the AEQ is $16,598.80.

[14] Under Section 45 of the Michigan Employment Security Act, MCL 421.45, "base period" is defined to mean "the first 4 of the last 5 completed calendar quarters before the first day of the individual's benefit year. *However, if an individual has not been paid sufficient wages in the first 4 of the last 5 completed calendar quarters to entitle the individual to establish a benefit year, then base period means the 4 most recent calendar quarters before the first day of the individual's benefit year."* The section was amended to read this way with the enactment of 1994 PA 162 (SB 1140). A "benefit year" is defined in Section 46 (MCL 421.46) to mean the period of 52 consecutive calendar weeks beginning the first calendar week in which an individual files a claim.

[15] For a review of the unemployment provisions of the various states as it relates to these four areas see, *Unemployment Insurance Modernization Act: Needed Reforms for Full Incentive Funding, by State*, National Employment Law Project, January 2009, [http://www.nelp.org/page/-/UI/needed.uima.reforms.by.state.jan.09.pdf] and *Implementing the Model Provisions of the Unemployment Insurance Modernization Act in the States*, National Employment Law Project, February 2009, [http://nelp.3cdn.net/dcc61269e71d7220ef_t8m6bpprp.pdf]. For a more general review of state UI laws see, *Comparison of State Unemployment Law (2009)*, Department of Labor, [http://workforcesecurity.doleta.gov/unemploy/uilawcompar/2009/comparison2009.asp]

Part-Time Work. The Department of Labor has stated that "part-time work" means any of the following:

- Situations where the individual is willing to work at least 20 hours per week.

- Situations where the individual is available for a number of hours per week that are comparable to the individual's part-time work experience in the base period. For example, if the individual worked 16 hours per week in the base period, the state may require the individual to seek jobs offering at least 16 hours of work. If the individual worked 32 hours per week, the state may require the individual to seek jobs offering at least 32 hours of work.

- Situations where the individual is available for hours comparable to the individual's work at the time of the most recent separation from employment. This is similar to the preceding definition except that it allows the state to take into account the period between the end of the base period and the filing of the first claim for UI benefits.

The Department of Labor has stated that states can adopt any of the above provisions, or a combination of the above provisions, or could have a broader definition, such as permitting an individual to be available for only 10 hours or more of work per week. The underlying principle, however, is that a state could not permit individuals to limit their availability so as to effectively withdraw from the labor market.[16]

Majority of Weeks of Work in the Base Period. In reviewing the "majority" provision, the Department of Labor has stated, "[s]tates are not required to have this exception in their laws in order to qualify for the incentive payment under this option. In fact a state may determine that an individual who has previously worked full time may be eligible for [UI benefits] even if the individual limits him/herself to seeking part-time work."

Further, the Department of Labor has stated, "[t]o obtain certification, the state's application must demonstrate that, at a minimum, all individuals who work the majority of weeks in the base period in part-time employment will not be determined ineligible because they are seeking only part-time work." States could not have a more restrictive provision, such as requiring part-time work throughout the entire base period

- **Compelling Family Reasons:** Provides UI benefits to claimants who voluntarily separate from employment for "compelling family reasons," which would be leaving employment because of domestic violence situations, to take care of an ill or disabled immediate family member, or to relocate to accommodate the employment-related relocation of a spouse.
  On this provision, the Department of Labor notes "[t]he Federal law provides than an 'individual shall not be disqualified from [UI benefits] for separating from employment' for compelling family reasons. In some cases, such as when the individual fails to advise the employer of an absence, the basis for the separation may

[16] See Title 20, Part 604 of the Code of Federal Regulations, 20 CFR 604.5(a)(1).

go beyond 'compelling family reasons.' That is, misconduct may exist despite the existence of what otherwise would be compelling family reasons, and the state may deny the individual under its misconduct provisions…Many state misconduct provisions have been interpreted to require a willful and wanton disregard of the employer's interest. The Department anticipates that these state law provisions are generally expected to meet the conditions pertaining to compelling family reasons since separations for compelling family reasons do not in themselves constitute a willful and wanton disregard of the employer's interest."[17]

The Department of Labor notes that, at a minimum, "immediate family member" (used in the domestic violence and illness/disability provisions) means a spouse, parents, and minor children under 18 years of age. State law can be more inclusive to include grandparents, siblings, domestic partners, adult children, or foster children.

Currently, Section 29 of the Michigan Employment Security Act, MCL 421.29, provides that an individual is disqualified from receiving benefits if he or she leaves work voluntarily without good cause attributable to the employer. An individual leaving work is presumed to have left work voluntarily without good cause attributable to the employer, and has the burden of proving that he or she left work involuntarily or for good cause attributable to the employer. The act specifically states, however, that an individual is not disqualified from receiving benefits if the individual has an established benefit year and leaves unsuitable work within 60 days of beginning that work or if the individual is the spouse of a full-time member of the U.S. military and has to leave work due to the relocation of the spouse's military assignment.[18]

In *Leeseberg v. Smith-Jamieson, Inc.*, 149 Mich App 463 (1986), the state Court of Appeals ruled that an individual who voluntarily left work to tend to her injured husband, left work without good cause attributable to the employer. The court noted, "[t]he Legislature's use of the term 'voluntary' is clear and requires application. Although we sympathize with claimant's plight and recognize the harshness of our result, we are not at liberty to read into the statute provisions which the Legislature did not elect to incorporate nor may we broaden the scope of the statute by an unwarranted interpretation of the language used. "Voluntary" connotes a choice between reasonable alternatives….Here, claimant was faced with returning to work and retaining employment or staying home to care for her husband and risking possible discharge. She chose to face termination because she wanted to care for her injured husband. While claimant's choice was prompted by compelling personal reasons, a good personal reason does not equate with good cause under the statute." (Internal citations omitted.)

---

[17] The UIPL is in a Q&A format where the quoted section was in response to a question asking whether state law could deny benefits to an individual who was fired for chronic absenteeism due to (as is later revealed) compelling family reasons.

[18] The military spouse exception was added with the enactment of 2008 PA 480 and 2008 PA 48 (HB 6427, introduced by Rep. Fred Miller). A companion measure, 2008 PA 479 (HB 6426, introduced by Rep. Gino Polidori) provides that the costs of providing UI benefits to displaced military spouses are payable under the non-chargeable benefits account of employers.

While this provision is not included in either HB 4785 or HB 4786, the Unemployment Insurance Agency estimates that, on the high end, enacting this provision would increase expenditures from the state unemployment trust fund by approximately $15.0 million on an annual basis.

- **Dependent Allowance:** Provides an additional dependent allowance for UI benefits, with a minimum per dependent amount of $15 and a minimum cap of $50 per claimant.

  About this provision, the Department of Labor has said that the dependent allowance would only be subject to the aggregate limit (a minimum of $50) set in state law. If an individual qualifies for the maximum weekly benefit amount ($362 in Michigan), that cap would not apply to the dependent allowance.

  Section 27 of the Michigan Employment Security Act, MCL 421.27, already provides a dependent allowance of $6 per week for each dependent, up to 5, at the time the individual files a new claim for benefits.

  While the increased dependent allowance is not included in either HB 4785 or HB 4786, the Unemployment Insurance Agency estimates that this provision would increase expenditures from the state unemployment trust fund by approximately $219.0 million on an annual basis.

- **Training Benefits:** Provides extended compensation to UI recipients who have exhausted benefits and enrolled in a state-approved job-training program or a job-training program authorized under the Workforce Investment Act (WIA).

  The Recovery Act provides that, under this provision, state law should provide benefits to individuals who are (1) separated from employment in a "declining occupation"; or (2) involuntarily and indefinitely separated from employment as result of a permanent reduction of operations at the individual's place of employment. The Department of Labor has stated that these two provisions are distinct provisions, meaning that training benefits are payable if an individual meets either criteria. The department notes that, under the first provision, "the state must pay the training benefit to an individual who voluntarily quits a job in a declining occupation, because the [Recovery Act] does not condition eligibility on the cause of the separation where the separation is from a declining occupation."[19] The Department of Energy, Labor, and Economic Growth would determine whether an occupation is "declining."

  Under the Recovery Act, the approved training program should train individuals for entry into a "high-demand" occupation. The individual receiving benefits would have to be making satisfactory progress in the training program to continue to receive benefits. The Department of Labor indicates that states may require progress reports from training providers and other evidence of attendance to make a determination that an individual is making satisfactory progress and that a state could, however, place certain time limitations on the receipt of training benefits.

[19] This distinction that the separation need not be "involuntary" is further highlighted when contrasted with the second provision, which explicitly states that the separation be involuntary.

The Recovery Act also provides that states would not be required to provide training benefits if an individual is receiving "similar stipends" or other training allowances that can be used for non-training costs.

The Department of Labor notes that the above requirements are the minimum requirements and that, "[i]f the state pays training benefits to a broader class of individuals participating in training…the state will meet the requirements for this option. For example, state law may pay additional training benefits to any individual who is preparing for a job in a 'demand occupation'; as opposed to a 'high-demand occupation.'" However, a state law would not qualify for certification if it limits training benefits to a narrower class of individuals. For example, if the training benefits are payable only to individuals in job training programs leading to high-wage occupations. The department also notes that training befits may be payable after an individual exhausts federal extended UI benefits (EUC08 or EB).

The Recovery Act provides that the above provisions, whichever two are selected, must be enacted as "permanent law" and "not subject to discontinuation." In UIPL 14-09, the Department of Labor has stated that "the provision is not subject to any condition - such as an expiration date, the balance in the state's unemployment fund, or a legislative appropriation - that might prevent the provision from becoming effective, or that might suspend, discontinue, or nullify it." This, in effect, means that a sunset date couldn't be included when the changes are enacted. Similarly, the provision couldn't be enacted as part of an appropriations act, as appropriations acts are not "permanent law."[20]

In UIPL 14-09, Change 1, the department has further clarified that "[i]f a state eventually decides to repeal or modify any of these provisions, it may do so, and it will not be required to return any incentive payments. However, in providing the incentive payments, Congress clearly intended to support states that had already adopted certain eligibility provisions and to expand eligibility to additional beneficiaries by encouraging other states to adopt these provisions. By specifying that the provisions must be in effect as permanent law, Congress also made clear its intention that the benefit expansions will not be transitory. Whiles states are fee to change or repeal the provisions on which modernization payments were based subsequent to receipt of incentive payments, Congress and the Department rely on states' good faith in adopting the eligibility criteria, and the application must attest to this good faith."

The federal Department of Labor has indicated to states that applications should be submitted to the department no later than August 22, 2011 in order to provide the department with sufficient time to review state applications to make the payments before the October 1, 2011 deadline set in the Recovery Act.

[20] In a March 9, 2009 Press Release, U.S. Senate Finance Committee Chair Max Baucus (D-Montana) stated, "[s]tates are not required to enact reforms and receive additional funds. States that do participate are encouraged to evaluate unemployment levels and workforce needs in 2011 when the provision is set to expire. If states decide to discontinue the reforms, they are not obligated to return Federal funds they have received. The temporary provision is designed to help accelerate economic growth and stabilization."
[http://finance.senate.gov/press/Bpress/2009press/prb030909.pdf]

For copies of the Department of Labor-Employment and Training Administration (DOL-ETA) guidance documents on the Recovery Act's UIMA provisions see,

- Unemployment Insurance Program Letter 14-09 (February 26, 2009), http://wdr.doleta.gov/directives/attach/UIPL/UIPL14-09.pdf

- Unemployment Insurance Program Letter 14-09, Change 1 (March 19, 2009), http://wdr.doleta.gov/directives/attach/UIPL/UIPL14-09c1.pdf

Legislative/Fiscal Analyst: Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.