MINUTES OF THE UNEMPLOYMENT INSURANCE BOARD MEETING
JANUARY 9, 2008
INDIANA GOVERNMENT CENTER SOUTH
10 N. SENATE AVENUE, ROOM 301-A
INDIANAPOLIS, IN 46204

Members present were Samuel Schlosser, President; Dave Thomas, Vice-President; Kent Tolliver; Barry Baer (via phone); Kevin Tully; Tom Hargrove (via phone); Paula Presnoples; Joe Evans and Randy Maxwell. It was acknowledged that a quorum was present. Also in attendance were Teresa Voors, Commissioner; Scott Sanders, Chief Financial Officer; John Ruckelshaus, Deputy Commissioner of Governmental Affairs; Dustin Stohler, General Counsel and Martin Morrow, Chief Operating Officer.

The meeting was called to order by Sam Schlosser at 10:07 am.

Guests present included Brian Burton and Ed Roberts of the Indiana Manufacturer's Association, George Raymond of the Chamber of Commerce, Paul Mitchell of the Governor's Office, Randy Gillespie, Budget Director for Department of Workforce Development.

TRUST FUND DISCUSSION:

Sam Schlosser began the meeting by informing all attendees of the purpose of today's meeting, which will be to introduce options to help guarantee the solvency of the Unemployment Insurance Trust Fund, which currently has a declining balance.

Teresa Voors informed the board that our administration is looking at the Trust Fund in attempts to bring the legislature up to speed on the status. The lead team members of DWD are reviewing our systems tax structure, how benefits are administered in our adjudication unit, and other ways to shore up the Trust Fund balance. She also stated that there is currently a vehicle bill on the legislative agenda that could be used to help fix the Trust Fund's declining balance. She again informed the Board that we have gathered today to explain how DWD taxes employers and administers benefits to the Board for a greater understanding.

Ms. Voors also stated that while we are concerned about the declining balance, it is important to remember that if the Trust Fund goes bankrupt, claimants will not go without benefits. Federal law allows the State to borrow money from the Federal Government to pay out Unemployment Insurance claims. For example, other states in the Midwest such as Michigan borrowed money in December from the Federal Government to fund their Trust Fund. She explained that through the Federal Trade Adjustment Assistance (TAA) Act, employees who have seen their jobs off-shored would also still receive their UI benefits and then see their claim continue as TAA continues to provide them with weekly benefits. Ms. Voors asked Scott Sanders to review the history of the Trust Fund.

Scott Sanders began his discussion by pointing to the Indiana (Taxable) Financial Data hand-out, a copy of which is included in the minutes. He informed the Board that the information he provided, is available through the Department of Labor website, and shows selected financial data on Unemployment Insurance Financial Data from 1938 to 2006. Column 2 of the chart shows the contributions collected, which Mr. Sanders explained is based on the tax that each employer pays for an employee's first wages $7,000 in wages.

Mr. Sanders explained Column 3, Interest credited to the Trust Fund, is interest that is received as a result of the Federal Government investing the balance of the Trust Fund and can fluctuate based on the amount in the Trust Fund and the earning rate. Column 4, Benefits Paid, is the amount that was paid out to eligible unemployed claimants. The next column shows the balance of the trust fund as of December 31 of each year. The last data listed is of 2006, which is approximately $477 million, and this year (not shown) is approximately $302 million. Mr. Sanders went on to explain Column 6, which is the year ending Federal loans to state reserve balance, which since 1938, has remained $0. Column 7 is the Year End net reserve balance, which the data shows as being the same as Column 5. The final column is data for the taxable wage base. In Indiana, this amount is $7,000, which is the Federal minimum, and there are currently nine other states in the United States at this amount. Mr. Sanders then pointed to the Comparison of Taxable Wage Base, a copy of which is included in the minutes. The list presents all 50 states ranked from highest taxable wage base, Hawaii at $35,300 to the lowest nine states: Arizona, California, Florida, Indiana, Louisiana, Mississippi, Puerto Rico, South Carolina, and Tennessee. Mr. Sanders created his own final column that adds the Contributions collected from employers and the interest credited to the Trust Fund and then subtracts the benefits paid out to claimants, which shows a steady negative outflow since 2001. He informed the Board, that as we have previously discussed, there are employers who are not contributing as much to the trust fund as their employees are taking out (debit balance employers), which attributes to the declining balance.

Commissioner Voors then discussed the tax determinations that might help resolve the Trust Fund. Currently there is a cap for employers to not pay more than 5.6% on the first $7,000 in taxable wages. Even though the employer may continue to layoff their employees and no matter how many unemployment claims are charged against their account, the tax rate will not go above 5.6%. Do demonstrate the impact of debit balance employers, the maximum tax collected would be $7,000 time 5.6% which is $392. If the employee is eligible to collect unemployment and is at the maximum benefit level of $390, the Trust Fund would be in a negative cash flow position on the third week of unemployment. The first week is the elimination period, the second week would leave $2 in the Trust Fund and the third week would leave the Trust Fund negative $388.

Mr. Baer questioned the taxable wage base, in that there is no way the administration can increase that amount from $7,000.

Ms. Voors informed the board that it must come from state statute and that there is no leeway within the department to change that amount. Mr. Sanders confirmed that it would have to be decided by the state legislature; both the House and the Senate would have to approve the increase. Paul Mitchell then informed the board that after the House and Senate approved, it would go before Governor Mitch Daniels for review and signature.

Mr. Sanders again pointed out to the board that since 2001, benefits paid out have exceeded the contributions collected and interest paid into the Trust Fund, which is listed on the graph explained previously.

Mr. Schlosser drew the Board's attention to the graph to point out the change in benefits paid out from 1988 and 1989 which nearly doubled in the following two years and have continued to increase or even double since that time. However, the contributions collected have remained the same, or even decreased.

Mr. Sanders then reviewed the Weekly Benefit hand-out which is included in the minutes. The information spans from 1979 to 2005 and lists the maximum weekly benefit along with the average annual increase percentage. He informed the board that the only way to change this amount is also through a vote in the legislature. Since 1997, the amount has increased each year to 2005, ending with a $390 maximum benefit amount. From 2000 to 2005, the maximum weekly benefit amount increased at a compound growth rate of 6.3%. Mr. Sanders pointed out that while the benefits are increasing, the wage base has remained the same.

Commissioner Voors noted that while there has been no increase since 2005, there was an attempt in last year's legislative session. She stated the correlation between increases in an employee's wages year after year with the amount of UI benefits they receive, and currently, 37% of workers on UI are receiving the maximum $390.

Randy Maxwell questioned the 37% receiving the maximum benefit, to which Mr. Sanders informed him that while many workers are eligible they may not be collecting that amount, due to programs like TAA. Mr. Maxwell also questioned Indiana's ranking on the taxable wage base, which Mr. Sanders replied that Indiana is high on the replacement rates. Ms. Presnoples asked if there are changes that could be made in the eligibility requirements. Mr. Sanders stated that the Agency is looking at ways in which the claims are adjudicated and work search requirements, as well as changes that could be submitted to the legislature regarding the taxable wage base. Ms. Presnoples wondered if this would ultimately create a higher payout amount.

Mr. Sanders discussed the idea of a mutualization of benefits. This means that for some employee claims, the amount is spread to all employers and is not specifically charged to the last employer of record but is absorbed by a pool of employers.

Ms. Voors informed the board that one of the items that DWD is studying is the proper treatment of severance pay, and how it is treated with regards to unemployment benefits. The agency is asking what does a severance package mean, laws regarding such packages and how lenient are we with respect to adjudication on severance packages. She also explained in further detail the mutualization idea in a historical context, where in the past, employers could appeal the use of their funds towards an employee that was no longer theirs, but who might have been a past employee laid off from a more recent firm. This is no longer the case, and the final employer is the only employer allowed to appeal, and all previous employers are mutualized.

Mr. Sanders then discussed the Indiana Claims Data hand-out, a copy of which is included in the minutes. The first column he discussed indicates the number for first payments made. Column three shows the number of weeks compensated for all unemployed. He then pointed to the following columns, which showed the number of Claimants Exhausting Benefits as well as Percentage of First Payments. These numbers continue to rise or remain fairly steady each year. The next columns highlight the average duration of claims, potential vs. actual. The actual column is less through most years, because the potential estimates do no necessarily take into consideration temporary shut-downs due to weather and industry changes. Columns 9 and 10 show the number of weekly insured individuals and percentage of covered employees. Column 11 shows the average weekly amount of benefits paid to individuals. This number continues to grow as individuals earn more they will also earn more in unemployment.

Mr. Sanders introduced the Change in Employers by Merit Rate for SUTA, a copy of which is also included in the minutes. This chart shows the shift in employers from 2005 to 2007 based on their merit rate calculations and the resulting estimated income that will flow into the Trust Fund.

Ms. Presnoples asked if it was safe to assume that there were more employers who went out of business in 2005 vs. 2007, as the amount of total contributions increased between those two years. Mr. Sanders informed her that either that or they moved to being credit employers. Mr. Roberts suggested it was also possible there was a reduced labor force. Ms. Voors also proposed a reduction in payroll; with less employees producing as much with less people, employers are more efficient and therefore have less temporary shut downs.

Mr. Maxwell wanted to know the main reason behind the declining balance in the Trust Fund, as it relates to employer contributions. Commissioner Voors asked that the board consider the information that in 2005, there were 6,050 debit employers at the 5.6% merit rate, and in 2007 there are approximately 8,000 employers at the 5.6% merit rate. She explained that as an employees benefits rise, they are no longer taxed.

Mr. Baer asked DWD if there was a model that showed the UI rate vs. tax issues. Mr. Sanders informed him that there is published information regarding the UI rate vs. Insurance Rate. He stated that there are employees who are on UI year after year, and that they are not unemployed, but they have a seasonal job. Ms. Voors also informed the board that the UI rate is not a truly accurate rate because it is a poll of 1,000 households by the labor market department. Not all people who are not working at the time of the poll are qualified or entitled to receive benefits, such as temporary or union workers; they are drawing benefits, but are not unemployed. There are many industries that this occurs in, such as school bus drivers who are out of work during holidays, road construction crews, etc.

Prompted by another question by Mr. Baer regarding the $7,000 cap, Ms. Voors again informed the Board that the only remedy to this increase would be through the legislature. Mr. Baer wondered what Administrative remedies there were. Mr. Sanders informed the board that we are working on increasing our collections effort as well as our UI profiling model, where we profile claimants who enter our WorkOne sites and gage whether or not they will max out their UI benefits. In order to prevent that, we set them up with training sessions. We are also working on other ways to change our work search requirements to ensure that more people are searching for jobs while collecting benefits. He mentioned that Texas has had success in reducing fraud by verifying work search claims with employers.

Mr. Baer also discussed the need to collect the complete amount of money owed by an employer to operate more efficiently. Ms. Voors explained that as an administration, we have no avenue to collect in that manner. Again, we are currently working with our counterparts in Texas to see how they collect. We are getting closer to a pilot program with a credit agency similar to the Department of Revenue.

Mr. Schlosser asked when it is most likely that the Trust Fund will run out. Mr. Sanders responded that with his current projections (not including obligated Reed Act funds, which must remain in the fund) assuming that all things remain status quo we will see the balance continue to decline to $100 million in March or April 2008. If economic conditions worsen, but we manage to make it through the first quarter of 2008, it will most likely be 'in the red' by the first quarter of 2009. However, as Ms. Voors informed the board, taxes are due at the end of the first quarter, which typically shows the largest amount paid in to the Trust Fund in May. Mr. Sanders stated that after employers mail in checks, they are typically deposited in the second week in May. He also informed the board that it is possible to accelerate the first quarter payments made by employers to build the fund quicker.

Mr. Baer asked Mr. Ruckelshaus when the end of this short session legislature would be, to which he responded possibly the middle of March 2008. They are currently scheduled to adjourn March 14. Mr. Maxwell questioned if it was the duty of the board to recommend changes to the legislature. Ms. Voors informed him that as a board, they are welcome to go to the legislature. DWD is currently working with both the IMA and the Indiana Chamber of Commerce on the necessary steps to take regarding the legislative session. In the past, groups like the IMA have lobbied on our behalf, and they, along with the Chamber of Commerce have entered a placeholder bill. There have also been study groups created to track the Trust Fund. However, we are looking to find the most permanent fix to the problem of the declining balance. If there are permanent changes, they will involve the legislature increasing the taxable wage base, a decrease in benefits, or more stringent determination of benefits.

Mr. Sanders stated that in 1982, a study group was formed to find options to help retain the solvency of the trust fund. They reported the same actions that we have discussed would be best to remedy the problem. Ms. Voors again mentioned the vehicle bill placed by the IMA in the current legislative session. Mr. Roberts, of the IMA, informed the board and DWD administrative staff that they have a bill, but have not filed yet, it is simply a placeholder.

Mr. Schlosser referenced Indiana Code 22-4-18-2 which states the UI Board responsibilities, one of which is to maintain the solvency of the Trust Fund and create and annual report for the Governor. Ms. Voors explained that through Paul Mitchell, we keep the Governor updated on a more frequent basis, as she meets with Paul in bi-weekly meetings. Mr. Schlosser stated that through the annual report to the Governor and legislators, there is a historical report with an operations update from the previous year. In the past, the Board has also done their best to keep the Governor informed.

Mr. Ruckelshaus stated that in his statewide travels meeting with Senators, Legislators, and Mayors he has been able to discuss labor issues, however, many legislators around the state are concerned with property taxes. He informed the board that the environment at the statehouse currently is very concerned with property tax. Mr. Baer questioned if there were currently any sponsors regarding our Trust Fund issue, to which Mr. Ruckelshaus responded that we do have some potential sponsors, but none committed yet.

Mr. Baer wondered if it was possible to accelerate our collection efforts now. Mr. Schlosser is concerned that while that might act as a band-aid to our problem, it is not a permanent fix. Mr. Sanders informed the board that it is possible to borrow Federal money interest free from January to September of each year. However, we cannot repay the money with Unemployment Insurance collected funds, but could use a surcharge on employers that we could use to repay the loan. Also, by accelerating the collections, we could stop from borrowing funds from the Federal Government. Mr. Sanders clarified the interest pay date; if we were to borrow money today, and we re-paid the Federal loan by September 30, 2008, there would be no interest due. Ms. Voors stated that if we took no actions until 2009, the fund would likely be bankrupt. If during this legislative session, we were able to increase the taxable wage base, it would not go into effect until the 2009 1st quarter taxes were paid in May 2009. Again, Mr. Sanders suggested actions such as bonds or surcharges could hold the balance steady until a remedy is discovered, similar to actions taken by Illinois.

Mr. Schlosser asked about the Special Fund, and if we can or should use this to pay Unemployment Benefits. Mr. Baer responded that we should not use this fund as a payment vehicle. However, the special fund has dollars that are unobligated, have not been assigned a specific use and could be used to pay benefits if the Board chose that direction.

Ms. Presnoples asked if we could assemble an economic team to find a real fix, as well as an administrative list of possible solutions to present to the legislature. Ms. Voors explained that DWD administration has no control over the actions of the legislature. However, we can start by educating the legislators with articles such as the Legislative Insight that was published. We will also continue speaking with UI experts and continue working on our collections proposal. Mr. Baer expressed concern with a possible recession in 2008, what other administration remedies can we take other than the collection proposal, especially since the property tax issue is in the spotlight.

Mr. Baer made a motion to accelerate collection efforts made by DWD, which was seconded by Joe Evans.

Ms. Voors then informed the board that there is currently $285 million dollars in the Trust Fund and she thinks it might be premature to begin accelerating our collection efforts. She would like to wait until the amount in the Trust Fund becomes lower. Mr. Schlosser asked if we should create a trigger point where we should begin to accelerate efforts. Mr. Sanders suggested a $150 million balance. Mr. Baer wanted to be sure of an exact amount as a trigger.

Mr. Baer retracted his motion and then re-introduced the motion, which would now include the trigger point in accelerating collection efforts.

Mr. Roberts, IMA, feels that currently, the temperature is working for us. With the warmer weather we have been having this winter, there have been fewer construction lay-offs. He feels that in stepping up our collection efforts, we will be spending more in administration tasks, such as mailings and software.

Mr. Evans seconded the motion that would include the trigger point. Sam Schlosser re-iterated the collections would become accelerated with a trigger point.

Mr. Sanders again suggested a trigger point of $150 million. He stated the wording of the motion should be on record as "the agency should reconvene the UI Board when the UI Trust Fund drops to a trigger point of approximately $150 million, in which case the Board may discuss accelerating the collections process."

Board clerk Brianna Carvin confirmed for Mr. Baer that his motion would be on record. Mr. Sanders stated that any acceleration should provide between one and three months additional payments.

Mr. Evans again seconded the motion made above. Mr. Schlosser announced the motion would be carried. At this time, Mr. Baer exited the meeting due to his travel schedule.

Sam Schlosser proposed the focus group that would study options for long-term solutions to the declining balance, which was previously mentioned by Ms. Presnoples. Mr. Ruckelshaus stated that DWD would send out the information gathered by the 1983 fact-finding group.

Mr. Sanders stated that it could be possible to create a committee of UI Board members could do an independent study or outsource the study funded through the Penalties and Interest Fund.

Mr. Thomas introduced a motion to form a study group to find long-term solutions to this declining balance. He also asked DWD to make recommendations for potential members.

Mr. Tully questioned what this study group would study and report to us. Mr. Sanders informed him that it would be best to give them directions on what specifically they should work on. Mr. Roberts, IMA stated that the only time the legislature has increased the taxable wage base was when it had been regulated by the Federal Government.

Mr. Evans asked if we could possibly suggest raising the wage base or adjust the tax rates. Mr. Raymond, Indiana Chamber of Commerce stated that the change in the taxable wage base would be a permanent change. Mr. Sanders stated that the tax rate A is based upon the balance of the Trust Fund.

Mr. Thomas again re-iterated his motion to form a study group that would create recommendations to the board that would be funded by the Penalties and Interest Fund. He also requested a template of members. Paula Presnoples seconded this motion. Mr. Schlosser noted that all board members carried the above motion.

Mr. Sanders stated that he would have a report for the Board at the next meetings. Mr. Maxwell asked if it was possible that by the next meeting we could have a potential cost breakdown of forming the study group. Mr. Tully also asked that we have a note of the fee associated with the acceleration of collections. Ms. Voors stated that typically, the fee in collections is assessed to the employer. Mr. Tully also asked for a breakdown of the total amount that is past due to the Trust Fund by employers. Ms. Voors explained that we have no specific amount, as some amounts are estimated wages; it is often difficult to gage the final amount.

Mr. Schlosser adjourned the meeting at 11:35 am.