

Minutes of the
Employment Advisory Council
Department of Workforce Services, 140 East 300 South, Salt Lake City
December 9, 2015 – 2:30 p.m.

Council Members Present:	John Chindlund	Employer Representative, Prince, Yeates & Geldzahler	
	David Davis	Employer Representative, Utah Retail Merchants Assn.	
	Greg Diven	Employer Representative, OCM, Inc.	
	Richard Thorn	Employer Representative, Assoc. of General Contractors	
	Todd Bingham	Employer Representative, Utah Manufacturers Assn.	
	William Nickell	Employee Representative	
	Dale M. Cox	Employee Representative, Utah State AFL-CIO	
	Dee Rowland	Public Representative	
	Jody McMillan	Public Representative	
	Erin Trenbeath-Murray	Public Representative	
	Matt Minkevitch	Public Representative	
	Council Members Excused:	Jan Zogmaister	Public Representative
		Diane Lewis	Employee Representative, Utah Laborer's Local #295
Tony Montano		Employee Representative, Utah State AFL-CIO	
Dan Peay		Employee Representative, United Steelworkers, AFL-CIO	
DWS Staff Present:	Casey Cameron	DWS Deputy Director	
	Michelle Beebe	Director, Unemployment Insurance	
	Kathy Bounous	General Counsel, DWS	
	Mike Miller	Chief, UI Contributions	
	Justin Williams	Chief, UI Benefits	
	Kim Auberger	Manager, Re Employment Services, Unemployment Insurance	
	Bethany Hyatt	Communications	
	Bradley Salmond	Program Manager, Unemployment Insurance	
	Chad Elskamp	Field Auditor, Unemployment Insurance	
	Mary Gehman-Smith	Support Staff Supervisor, Unemployment Insurance, Minutes	

Agenda Item	Discussion
Welcome and Approval of Minutes	<p>Ms. Cameron welcomed the group and called for a motion to approve the Minutes from the August 17, 2015 meeting. Motion: Dee Rowland motioned to approve the Minutes as written, John Chindlund seconded the motion and the motion carried with one correction: Diane Lewis is with Utah Laborer’s Local #295, not the United Steelworkers. Mr. Davis suggested in the future, the Agenda and entire packet, including a set of the last meeting minutes, be distributed ahead of time.</p>
Update on UI Trust Fund & 2015 Tax Rates	<p>Ms. Beebe provided a basic recap of the UI Trust Fund (See Attachments).</p> <ul style="list-style-type: none"> • The Fund is contributed 100% from employers and is only used to pay benefits. Each year a minimum contribution rate is calculated for employers. This formula is based on a Benefit Cost Ratio, which is how much the employer was liable for benefits in the last four years, compared to their total taxable wages; • There is a Reserve Factor based on the health of the Trust Fund. The Benefit Cost Ratio in this Reserve Factor only applies to 27% of Utah employers. The remaining 73% don’t have any Benefit Costs, meaning they qualify for the minimum rate, which ends up being .002 this year or \$64.40 per employee. This is a one third decrease from what the minimum rate was last year. For the 27% of employers that do have benefit costs, the lookback in terms of how much they are liable for, was shifted forward one year, so instead of going back to 2011, we are only going back to 2012 and adding 2015. In reviewing the claims volume for 2011, and how it changed to 2015, it is nearly cut in half. Therefore, due to this shift, the benefit cost ratio for employers that did experience unemployment will be decreasing; • There is a Social Cost Rate determined by benefit costs that cannot be charged to specific employers and is added to the UI tax rate for all employers; <p>As the status of our UI Trust Fund is very healthy this year, we were able to see a reduction in all three of those elements based on the improving economy;</p> <ul style="list-style-type: none"> • Ms. Beebe referred to Trust Fund Balance Projections (Attached) which indicates the minimum and maximum reserve levels. We want to identify how much should be in the Trust Fund if we were to experience another recession. If the economy had a downswing and UI didn’t collect any more contributions, how much would it take to pay 18-24 months of benefits. As of June 30, 2015, the balance is more than \$881M, just below the maximum adequate reserve. This calculates to a reserve factor of 1.0; <p>Mr. Davis stated he is thrilled at this progress. In the depth of the recession, the Trust Fund dipped as low as \$253M and that amount was being paid out each week in benefits;</p> <ul style="list-style-type: none"> • Last week, the 2016 Annual Rate Notices were mailed to employers. If we continue at the current rate, in June 2016, we will be above the maximum level. If this trend holds true, the reserve factor could go down to 0.95 in 2017, giving the 27% of employers that do have benefit costs, an additional reduction in their liability; • The Average Employer Unemployment Insurance Tax Rates (attached) compares Utah’s Average with the National Average. In

	<p>2008, this Council helped pass legislation that broadened the minimum and maximum adequate reserve. Prior to 2008, we were looking at how much would it take to pay benefits between 17-19 months, in 2008 it was changed to 18-24 months. The hope by broadening is that there would be less volatility in tax rates. Speculation is that because we were able to make this change, Utah is one of 15 States that remained solvent during the Great Recession. From 2011-2013, the Utah average plateaued. During this time, Legislation was passed to cap the maximum rate for employers to try to mitigate the impact to employers. There is a balance between tax rates and taxable wage base. Other states do it differently. Utah has a balanced approach. Our taxable wage base is indexed to our average wage which helps as wages increase in the State of Utah. Utah has one of the lowest tax rates in the nation, yet have one of the highest taxable wage bases;</p> <ul style="list-style-type: none"> • The Utah 2016 UI Tax Rate Distribution for Active Employers (attached) which translates to the employer’s bottom line for liability. 73% of Utah employers in 2016 have the minimum rate of .002% which equals \$64.40 per employee. For that 25% of employers that don’t qualify for the minimum, the average rate is 1.62% which equals \$521 per employee per year; • See Press Release (Attachment B); <p>Mr. Davis added it has been painful to build the statute the way it currently is, but it is working well. He acknowledged the Department and the Council for their roles in making this successful.</p> <p>Ms. Beebe stated some might say we are due for another recession, however, in talking with DWS’ Workforce Research Analysis (WRA), there is no evidence other than the cycle of years that have passed. Utah currently has a 3.6% unemployment rate. Mr. Diven asked if it could drop any lower. 3% is considered full employment.</p> <ul style="list-style-type: none"> • See Determination of the Maximum Weekly Benefit Amount, Monetary Eligibility Requirement and Taxable Wage Base (Attachment C).
<p>Discussion on CUBS Funding</p>	<p>Ms. Beebe referred to CUBS Modernization Project (Attachment D).</p> <ul style="list-style-type: none"> • CUBS (the UI Benefit Payment system) was originally built on a Versata platform. When the company announced they were raising their maintenance costs 502 percent, a decision was made to rewrite it into a .net environment, in order to avoid these maintenance costs. This project is being approached module by module. <p>Mr. Diven asked if the project is on target. Ms. Beebe referred to pages 2-3, showing the various Milestones of the project.</p> <p>Mr. Minkevitch asked for clarification regarding the value of an automated crossmatch with Appriss against active unemployment claimants who are incarcerated. Ms. Beebe explained by crosschecking, we can determine if someone is incarcerated. If one is incarcerated, they are most probably not able and available for work, or able to actively seek work.</p>

	<ul style="list-style-type: none"> The \$20M currently in the Trust Fund is not included in the calculation when employer contribution rates are identified. Using this money does not affect employers. Mr. Davis asked for clarification as to why the money went into the Trust Fund if it was earmarked for modernization. Ms. Beebe replied this is a judgement call by each State. Utah could have put it in a separate fund and used it for modernization efforts, however the benefit of putting it into the Trust Fund, was during the recession, when the balance was low, it could have been used to pay benefits. Ms. Beebe stated we have had a few delays due to DTS staff turnover.
<p>Potential Legislation for 2016</p>	<p>Ms. Bounous reported the following:</p> <ul style="list-style-type: none"> As far as the upcoming Legislative session, DWS doesn't anticipate being proactive as a Department. The one piece that affects this Council and the UI program is the changes in DWS' record sharing statute. In 2014, Congress passed the Workforce Innovation and Opportunity Act (WIOA) which supersedes the Workforce Investment Act (WIA), therefore the acronym will be changed accordingly in the State Code. <p>Mr. Davis asked Ms. Bounous to let the Council know once a Bill # is assigned on the record sharing statute. He becomes concerned when the statute on data sharing is opened up. Senator Wyler will be the main sponsor on this Bill. Ms. Beebe stated without any active legislation, she doesn't anticipate this Council meeting during the session.</p>
<p>Update on SB 281 Debt Collection Info</p>	<p>Ms. Beebe referred to the Debt Collection Information Amendments Activity Report (Attachment E).</p> <ul style="list-style-type: none"> Discussion took place at the last meeting about an Audit process to ensure these debt collection agencies are adequately protecting our information. As of right now, we are in active talks with the Administrative Services Division. By the end of this year, we anticipate having a certification letter so all 78 of these creditors/debt collection agencies will receive an annual letter which asks a series of questions. By the end of this fiscal year, we anticipate having a third party entity which will go out and do an on-site audit. <p>Mr. Thorn asked what the penalty is for violations. Ms. Bounous reported up to \$10,000 for each penalty. Mr. Davis asked if the decrease in 2015 could be due to this information not being as valuable as the creditors originally thought. Mr. Miller added debt collectors wouldn't keep asking for the data if they didn't find it valuable.</p>
<p>Update on HB 65 Information Sharing with DOL WHD</p>	<p>Ms. Beebe provided an update on HB 65. After invaluable input from this Council, coordination with the Department of Labor (DOL), and discussion with our Legislators, the statute states when DWS finds an employer to have inaccurately identified an individual as an independent contractor, rather than an employee, the employer will be given an opportunity to "cure the misclassification." If the employer fails to do so, the aggregate information may be shared with the U.S. Department of Labor Wage and Hour Division.</p> <ul style="list-style-type: none"> The value to the company for having an independent contractor is that they are not liable for Unemployment Insurance tax, are not required to carry Workers' Compensation coverage, and there is no FLSA protection. There was quite a bit of concern expressed from this Council regarding sharing this information which went into effect in May. DWS is in the final stages of executing an MOU with the DOL. Ms. Beebe continued by walking through what is covered in the

	<p>MOU:</p> <ul style="list-style-type: none"> ○ Employers were advised if they fail to comply, their information would be shared with the DOL, Wage and Hour Division. This information will be going out to all employers on their Audit findings; ○ We will only share the information as provided in the statute; ○ If the information sharing is not mutually beneficial, it can be stopped; ○ There is a clause that states employers not subject to the Workforce Services Employment Security Act will not be shared with the DOL; ○ The Wage and Hour Division may use DWS information to conduct targeted investigations for possible violations of other Labor Laws such as Child Labor, Uncompensated Overtime and failure to pay minimum wage; ○ Prohibits them from sharing our data with other entities; ○ DWS must report to the legislature on the effectiveness of the sharing; <p>The MOU has been finalized internally, and has been sent to the DOL for signature. A final copy will be sent to the Council.</p>
Workforce Innovation and Opportunity Act (WIOA)	Ms. Beebe stated a summary was presented at the last meeting. WIOA is designed to meet the needs of the customers. Three aspects that impact UI. 1. Focus on re employment (UI is a mandatory partner); 2. Meaningful Assistance, and; 3. Information sharing. It includes a section in accountability. Part of this involves using wage records to identify employment trends. This plan needs to be completed and submitted to the Federal Government by March 2016. Michelle will email out to the Council.
Open Meeting Training	Ms. Beebe stated the Legislature requires annual training on the Open Meetings Act . (See Attachment F).
Other Department Initiatives	<p>Ms. Cameron referred to the Division Overview booklet (included in the packet). DWS has 1800 employees, with 250 in Leadership positions. This booklet explains who we are and what we do.</p> <p>Ms. Beebe referred to the most recent Annual Report from the Worker Classification Enforcement Council (Attachment G).</p> <p>Mr. Diven asked about the effort to keep track of SUTA Dumping. Ms. Beebe replied SUTA Dumping is when an employer incurs a high contribution rate, they close out their business, change their name, or merge with another company. DWS has an dedicated staff member assigned to this.</p>
Adjourn	John Chindlund motioned to adjourn, Ms. Rowland seconded and all were in agreement. The meeting adjourned at 3:44 p.m.