Responses to Testimony Opposing House Bill 394

Recent legislative testimony from opponents of House Bill 394 (HB 394) has, through a combination of overgeneralizations, omissions and factual inaccuracies, badly mischaracterized certain key provisions of the bill. This document has been prepared to set the record straight by shedding light on what exactly HB 394 does – and does not – do.

1. **Opponent Assertion:** Ohio's unemployment insurance system should serve as a state "safety net" designed to support "vulnerable working families" seemingly for as long as necessary.

   Response: Unemployment compensation is not a family support welfare program. It is a partial wage replacement insurance program for individual workers that requires that individuals become unemployed through no fault of their own in connection with work and are able to work, available to work and actively seeking work as a condition of receiving unemployment compensation.

2. **Opponent Assertion:** According to a 2007 study by economist Dr. Wayne Vroman of the Urban Institute, Ohio's taxable wage base is insufficiently low and should be permanently raised and indexed to inflation.

   Response: Dr. Vroman is well known nationally as an advocate for indexed state unemployment insurance taxable wage bases in every state. The recommendations of the Urban Institute in 2007 were made before Ohio's trust fund had a negative balance exceeding $2.6 billion, and before the 2008 recession. **The recommendations nonetheless included both a freeze in the maximum benefit amount for 2009 to 2011 and the elimination of the dependency provision.**

   Opponent testimony also **misstates Dr. Vroman's conclusion about the taxable wage base and fails to mention the benefit-reduction provisions he proposes.** His conclusion in 2007 was that the tax base should be raised and indexed to the state average weekly wage, not inflation.

3. **Opponent Assertion:** Employer tax rates have not changed since Ohio last raised the taxable wage base.

   Response: Although the state unemployment tax base has not changed for many years, **employer tax payments have increased and decreased with increasing and decreasing benefit claims.** State unemployment contributions (i.e., taxes) are paid as a rate against the first $9,000 of wages paid (not earned). Although the taxable wage base has been $9,000 for many years, the contributions paid by employers fluctuate with claims experience. **So it is not true to suggest that employer taxes paid have not changed for 20 years. In fact, they change every year with benefit claims experience.**

4. **Opponent Assertion:** Ohio's current taxable wage base of $9,000 is much lower than the national average.

   Response: Using a "mean" average to estimate the average state taxable wage is not appropriate because there are a few smaller states that have outlier tax bases: Alaska ($38,000), Hawaii ($40,000) and Washington ($42,100). A review of state tax bases in 2015 shows that **19 states are below $11,000, including Indiana ($9,500), Kentucky ($9,900), Michigan ($9,500), Pennsylvania ($9,000).** Of surrounding states, only West Virginia was higher ($12,000).

5. **Opponent Assertion:** HB 394 enables employers to pay less into the state unemployment insurance system.

   Response: HB 394 does not enable businesses to pay less into the system overall. There is nothing in the bill that reduces unemployment taxes. The bill actually raises the tax base by 22 percent in one year (2018), from $9,000 to $11,000, and keeps it at $11,000 for an extended period until the Ohio Unemployment Insurance Trust Fund reaches the "Minimum Safe Level." State unemployment contributions (i.e., taxes on employers) are experience-rated so that rates go up in response to increasing benefit payout and go down in response to reduced benefit experience.

   Ohio is projected to pay off its outstanding Title XII debt in 2017 to eliminate the short-term Federal Unemployment Tax Act (FUTA) penalty tax imposed under federal law. **This reduction in the net FUTA rate will occur under current law whether HB 394 is enacted or not.**

   If benefit charges continue to go down, the combined effect of higher tax revenue, higher payroll (over the last three years), and lower benefit costs may have the effect of reducing the taxes to be paid by some employers. **This is how insurance works – when claims experience is low, rates go down.** If there were no increase in the tax base, the effect of lower claims would still have the effect to lower experience rates. If a recession begins in 2017 or 2018, benefit payout will increase, payroll will go down and tax rates over the three years post-recession will increase. This is the pattern after every recession.

6. **Opponent Assertion:** There is no justification for freezing Ohio's maximum weekly benefit amount.

   Response: Ohio's maximum weekly benefit amount is too high to sustain. It is higher than the national average and higher than every surrounding state except Pennsylvania.

   HB 394's proposed freeze on the maximum weekly benefit is justified given the insolvency of the state's Unemployment Insurance Trust Fund. **The automatic increase in the maximum weekly benefit amount has been one of the significant contributors to the state's insolvency,** and the additional benefit amount permitted for high-wage workers with dependents has been an insolvency driver for decades. **The proposed temporary freeze until the fund returns to solvency is an appropriate and measured response.**

   Maximum weekly benefit amount freezes are common as solvency provisions and are needed to make significant progress in eliminating the deficit and increasing the state trust fund balance. Repealing the freeze upon reaching the Minimum Safe Level also is appropriate, whether it takes two years or twenty years to reach solvency.

Many states do not have automatic increases in the maximum weekly benefit amount. Even in states with maximum benefit amounts that do not increase, the weekly benefit amounts of most claimants do increase because the base period wages of individuals filing for unemployment compensation increase. **Under HB 394, claimants in Ohio will see no reduction in their weekly benefit amount if their base period wages were below the statewide average weekly wage in 2015.**

Finally, some have claimed that HB 394 permanently freezes the maximum weekly benefit a laid-off worker may receive. This is not true. **The bill automatically ends the temporary freeze in maximum weekly benefit amount when the trust fund reaches the Minimum Safe Level.**

7. **Opponent Assertion:** Only 23 percent of Ohio's unemployed workers receive benefits under Ohio's current system, and HB 394 will make that number drop even lower.

   Response: It is misleading to claim that "only" 23 percent of unemployed persons in Ohio receive unemployment benefits because such a claim measures actual unemployment compensation payments against a small sample survey of households **that includes many individuals who by definition are not eligible to be paid.**

   This percentage always goes down after recessions because fewer and fewer claimants are laid off due to lack of work, and a higher percentage of the remaining number of claimants are not eligible. Ineligible claimants should not be paid. For many reasons, not everyone who considers himself or herself to be unemployed should be paid unemployment compensation. Individuals who should not be paid include:

   - Individuals incarcerated
   - Individuals who were discharged from employment for just cause
   - Individuals who quit work without just cause
   - Individuals who only recently began working
   - Individuals who are not citizens or aliens in employment with work permits
   - Individuals who work as independent contractors
   - Individuals who are not able to work, available to work or actively seeking work
   - Individuals who have chosen not to claim unemployment

   A lower percentage is consistent with fewer lack-of-work layoffs and more jobs being available in the Ohio economy. It is also consistent with tighter claims administration designed to assure that only individuals who are eligible to be paid are paid, and those who are not eligible are not paid.

8. **Opponent Assertion:** HB 394's provision for creating an additional waiting week reduces the total number of weeks a claimant is paid during a benefit year.

   Response: With few exceptions, the additional waiting week proposed in HB 394 does not reduce the total number of weeks a claimant is paid during a benefit year. An individual who serves a waiting week after working fulltime in his or her benefit year does not lose eligibility to be paid for subsequent weeks of unemployment in the benefit year. **The additional waiting week assists in avoiding fraud and multiple weeks of overpayments.** Difficulty in discovering individuals working fulltime while claiming unemployment compensation has been identified by the U.S. Department of Labor and states as resulting in higher erroneous payment rates.

9. **Opponent Assertion:** HB 394 denies benefits for any worker who is subject to a labor "lockout" by management.

   Response: The bill's provision amending the labor dispute disqualification is consistent with the law in many other states. It does not mean that individuals who want to work but are "kicked off the job by the employer during a contract dispute" will automatically be disqualified from benefits. It simply provides for a disqualification during the period of a labor dispute when the individual's unemployment is caused by the dispute.

   In contract disputes, the state agency administering unemployment compensation should remain objective and neither automatically pay benefits nor automatically deny benefits to individuals who are unemployed during the course of a labor dispute. The question should be whether the unemployment of the individual was caused by the labor dispute.

   The question of causation is not eliminated by the proposed statutory change. HB 394 simply deletes reference to "lockout" as a reason for a presumption that the unemployment was not due to the labor dispute.

   Unlike other disqualification provisions, the labor dispute disqualification is only for the duration of time that the labor dispute caused unemployment. Each week the circumstances of the dispute may change, and causation should not be presumed.

10. **Opponent Assertion:** Reversing the repeal of the Social Security offset penalizes older workers and is an inappropriate step for the state to consider when addressing the solvency of the state's Unemployment Insurance Trust Fund.

    Response: The offset for Social Security retirement benefits against unemployment compensation was in place in Ohio for 27 years through the recessions of the early 1980s, 1990s, and 2002. The repeal of the offset in 2007 was enacted at a time when the state's Unemployment Insurance Trust Fund had a positive balance of more than $400 million, before the recession of 2008 and before Ohio became one of the most insolvent states in the country. Restoring the offset is both logical and reasonable as part of Ohio's solvency efforts.

    The fact is, the elimination of the offset in 2007 added significantly to the deficit in Ohio's trust fund; if the offset had not been repealed, the size of Ohio's current remaining federal debt would be smaller.

    With Ohio's continuing trust fund deficit of approximately $775 million, every dollar of unemployment compensation paid extends the period before trust fund solvency may be reached. Because the state has borrowed to pay benefits, **the effect of continuing the repeal of the offset is to impose additional interest charges, reduce funds available to pay benefits to other claimants, and/or prolong the period of high federal and state unemployment insurance taxes.** The fact that other states that do not have outstanding federal debts have chosen to repeal the offset ignores the fact that Ohio is among the most insolvent states in the country.

    Offsets of partial wage replacement programs are common. For example:

    - Social Security Disability offsets for state workers' compensation.
    - Private short-time and long-term disability insurance commonly offsets for government wage replacement benefits.

- The Obama administration, in its recent budget proposal, included language to offset unemployment compensation against Social Security Disability benefits.

The policy underpinning of unemployment compensation is that it provides short-time partial wage replacement to individuals who rely on their wages as the primary source of income as they search for work. **Unemployment compensation was <u>not intended</u> and is <u>not financed</u> to serve as a wage-supplement program.**

Individuals who receive unemployment compensation without an offset for periodic Social Security retirement payments may be provided with more in the combination of wages and Social Security benefits on a weekly basis than they earned during the year prior to becoming unemployed. Use of the unemployment trust fund as a wage supplement for Social Security instead of a short-term wage replacement increases insolvency and was recognized by the enactment of the federal provision in 26 USC 3304 (a) (15), which became effective in 1980. It was only in response to intense lobbying that the federal offset has been undercut by proponents of increased spending.

Bottom line: It is not sound fiscal policy to ignore circumstances in which an individual is receiving multiple sources of wage replacement and place the full burden on the employer-financed unemployment insurance system.

11. **<u>Opponent Assertion</u>:** Repealing Ohio's current dependency provision will drastically hurt claimants and goes against what other states do with regard to dependents.

<u>Response</u>: Ohio's unusual dependency provision should be repealed for a host of reasons. First and foremost, the unemployment insurance program is <u>not</u> a family support program. In determining whether an individual is eligible to receive unemployment compensation, there is no review of the wages of other members of the individual's household or family. Unemployment insurance is not means-tested. It is not public assistance. **Additionally, the dependency allowance provision imposes significant unnecessary additional cost to a program that is insolvent.**

Ohio is among only 14 states with some form of dependency allowance. Most states in this group simply add some number of dollars on top of the unemployment compensation otherwise to be paid for each dependent of the claimant up to statutorily determined caps. Ohio's provision is unusual in that it provides no additional dollar amount per dependent but increases the maximum weekly benefit amount for individuals with dependents if they have sufficient base-period wages to qualify for the higher weekly benefit amount. <u>The result of this provision is that only claimants with average weekly wages above the statewide average receive any additional amounts due to dependents. However, the additional amounts provided are substantial</u>.

In 2015, Michigan provided $6 per dependent, with a maximum of 5 dependents, with no increase in the maximum weekly benefit amount of $362. Pennsylvania provided $5 for the first dependent and $3 for a second dependent, which is added to the weekly benefit amount otherwise determined. **Ohio provides no per-dependent allowance but increases the weekly benefit amount for higher wage workers by up to $148 in addition to the weekly benefit amount they would otherwise receive.**

There is no federal requirement to include a dependency provision. No federal administrative funds are provided for the additional cost of determining dependency, which can be difficult in households with multiple wage earners and change over time with child

support and custody decisions and as dependents become independent. **The complexity of these determinations results in delays in determinations of unemployment applications and results in erroneous payment amounts.**

Treating all individuals the same in determining weekly benefit amounts is more streamlined administratively, less costly and more consistent with insurance principles in determining wage replacement amounts upon which the unemployment insurance program is based.

12. **Opponent Assertion:** Reducing the maximum number of weeks qualifying workers are eligible to claim unemployment benefits will only make Ohio's unemployment insurance program worse and will have a direct negative impact on workers.

    Response: Reducing the maximum number of weeks of benefits is an appropriate response to the solvency of the Ohio Unemployment Insurance Trust Fund. **The national trend among insolvent states seeking to regain solvency in their unemployment insurance trust funds has been to reduce the maximum number of weeks an individual may be eligible to claim benefits during the benefit year.** States reducing the maximum number of weeks include Michigan, Missouri, Kansas, Florida, Georgia, South Carolina, North Carolina, Arkansas and Illinois (for one year).

    Ohio currently uses a range of 20 to 26 weeks for maximum number of weeks to claim benefits, depending on the number of qualifying weeks during the base period for which an individual earns or is paid benefits. Most applicants qualify for a maximum of 26 weeks with a small number qualifying for 20, 21, 22, 23, 24 or 25 weeks.

    Most claimants in Ohio and other states do not claim all of the weeks for which they are potentially eligible because they return to work sooner, begin school full-time or for other reasons. **The average duration of unemployment compensation in Ohio as of the second quarter of 2015 was only 14.9 weeks, even though the maximum number of weeks to claim benefits in most cases was 26 weeks.**

    Historically, the maximum number of weeks set by states at the beginning of the unemployment insurance program was lower than 26 weeks. In the 1930s, it was thought that the financing of the program would only be sufficient to provide a maximum of approximately 15 weeks of benefits. Trust fund balances grew through the end of the 1930s and during the Second World War as wartime employment was high, a large portion of the labor force was employed in the military, and the number of unemployment applications was small.

    After World War II, states opted to increase the maximum number of weeks of benefits because trust funds were solvent, job growth was booming and there was an increase in individuals entering the labor force. We are in a much different position today with an insolvent trust fund, historically low labor-force participation rates, and growth in employment that is only marginally sufficient to keep unemployment rates low.

    Failure to adjust the program's maximum number of weeks with the current and projected realities will result in long-term embedded insolvency.

    HB 394 effectively mirrors the sliding scale provisions in North Carolina, providing a maximum of 12 to 20 weeks of benefits. **While this is a significant reduction in the number of potential weeks of benefits, it has been very effective in North Carolina**

in eliminating that state's federal unemployment insurance debt and putting North Carolina on a path to solvency. A comparison of Ohio and North Carolina using the quarterly data summaries from the U.S. Department of Labor for the second quarter each year since 2011 demonstrates the differences:

	NORTH CAROLINA	OHIO
Trust Fund Balance (000)		
2011	Loan 2,536,169	Loan 2,611,387
2012	Loan 2,567,222	Loan 1,791,716
2013	Loan 2,155,595	Loan 1,554,537
2014	Loan 980,986	Loan 1,381,022
2015	**Positive 689,630**	**Loan 979,499**
Average Duration of Benefits (weeks)		
2011	17.1	18.8
2012	16.3	17.3
2013	15.9	16.3
2014	17.3	16.1
2015	12.0	14.9
Exhaustion Rate (percentage)		
2011	52.9	43.9
2012	54.2	37.8
2013	50.9	37.5
2014	48.0	32.8
2015	46.7	27.9
Covered Employment Growth (000)		
2011	3,769	4,890
2012	3,815	4,951
2013	3,891	5,026
2014	3,973	5,101
2015	4,066	5,181

The comparison with North Carolina shows that although North Carolina actually had a higher negative trust fund balance than Ohio and was more deeply insolvent in 2012, the steps North Carolina has taken in solvency legislation, including the reduction in potential weeks of benefits, has effectively transformed the state from insolvency to a growing positive balance in just three years.

As would be expected during the post-recession recovery, the average duration of unemployment compensation declined and the most dramatic reduction came from 2014 to 2015 as the policy changes became fully effective. Somewhat surprisingly, despite the reduction in the number of potential weeks of benefits, the exhaustion rate in North Carolina continued to decline, but not as fast as in Ohio.

The economic recovery in North Carolina accelerated faster than in Ohio as measured by the increased number of individuals in employment covered for unemployment insurance. Employment growth from 2014 to 2015 in North Carolina was 2.34 percent compared to 1.67 percent in Ohio.

Moving forward, North Carolina's unemployment trust fund is improving in solvency, the FUTA offset credit penalty for 2015 has been lifted and the state has added another incentive for businesses to locate in North Carolina.

13. **Opponent Assertion:** The drug-testing provision of HB 394 is unconstitutional and will lead to more Ohioans locked up for minor crimes in an already overcrowded prison system.

    Response: There is no question about the constitutionality of the drug-testing provision in HB 394. The provision is limited by federal statute enacted as part of the Middle Class Tax Relief and Jobs Creation Act of 2012. The language is very narrowly drawn; federal regulations and administrative interpretation of the Act have been distributed to all states and the public. No case law exists with respect to this provision.

    The U.S. Department of Labor published rules to implement the statutory provisions in the Federal Register on October 9, 2014, along with Unemployment Insurance Program Letter No. 1-15. **Since the Ohio Legislative Service Commission last inquired with the U.S. Department of Labor, the agency has concluded that there are no federal conformity or compliance issues with the language in HB 394.**

    Individuals who may have been terminated from their most recent position as a result of unlawful drug use may or may not file an application for unemployment compensation. **HB 394's drug-testing provision is not only reasonable in light of the earlier drug use by an applicant, but assures as a matter of policy that individuals who are unlawfully using controlled substances should not be eligible to establish a benefit year.** It is a condition of unemployment compensation under federal law 42 USC 503 (a) (12) that an individual must be able to work, available to work and actively seeking work as a condition of being paid unemployment compensation. An individual who fails a drug test by an employer or by the state's unemployment insurance agency in the limited circumstances in HB 394 is not available to work if the only work the applicant can perform is a job that requires a drug test.

    Early identification of illegal drug use enables the agency to make effective referral to other agencies providing assistance and treatment. It also avoids mismatches of unemployed workers with employers that have drug testing requirements as conditions of employment.

    Contrary to what some opponents of HB 394 claim, a determination to disqualify that is based on an individual failing a drug test is appealable. If there are issues with how the drug test was administered or the interpretation of results, such issues could be raised on appeal just as they are now when an individual is terminated by a private employer for failure of a drug test.

    Opponents imply that enactment of the drug-testing provision of HB 394 would somehow perpetuate ongoing misguided responses by the Ohio General Assembly to legitimate drug problems and lead to overcrowded prisons. **There is nothing in HB 394 that provides for punishment or imprisonment of individuals.** The bill only provides for a disqualification of individuals who fail drug tests under very narrow circumstances.

    Additionally, contrary to what some opponents believe, **the drug-testing provision of HB 394 does not permanently disqualify an individual from unemployment**

compensation. Each application for unemployment compensation is determined on its own merits. An individual may file an application for benefits without limitation.

The drug-testing provision of HB 394 will not yank a safety net from underneath Ohio's struggling and vulnerable families. Individuals who have already been terminated for illegal drug use clearly have an issue to resolve. This provision encourages individuals to change behavior so they are better able to effectively seek and obtain work.

14. **Opponent Assertion:** HB 394 is an unbalanced approach to restore solvency, the burden of which is shouldered largely by workers.

    Response: HB 394 both increases the state unemployment tax base and makes benefit cuts to enable the state to become solvent. It is a balanced approach that does not disproportionately harm low-income Ohioans.

    It is not the role of the unemployment insurance system to ensure that workers fall within or outside a definition of poverty created for public assistance programs. **Unemployment insurance is not a public assistance program. It is only a partial wage replacement insurance program.** The purpose of the program is not to pay benefits to everyone who is unemployed on a permanent basis. It is a short-term, temporary, partial wage-replacement response to unemployment and not a basis upon which unemployed individuals should rely for long-term support.

    Ohio compares favorably to other states in providing benefits. **As of the second quarter of 2015, both the maximum weekly benefit amount and the average weekly benefit amount were above the national average and higher than all surrounding states except Pennsylvania.** HB 394 increases the state unemployment tax base by 22 percent to $11,000 in 2018 and leaves it at that level until the state's Unemployment Insurance Trust Fund reaches the Minimum Safe Level.

    The benefit cuts in HB 394 are consistent with the trend among states that have seriously addressed solvency since the Great Recession of 2008. Obviously, most states in the country did not have large deficits to overcome, but those that did took significant action to reduce benefits as part of solvency legislation.

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