

Coming Back for More: Michigan Lawmakers Aim to Cut Unemployment Insurance for Second Time in Six Months

By Mike Evangelist and Rick McHugh

Michigan workers continue to face one of the nation's toughest labor markets. Earlier hopes of a recovery proved to be premature as the number of unemployed and the unemployment rate in Michigan increased substantially in recent months, while the number of labor force participants and number of workers holding a job fell.¹

Adding injury to insult, state lawmakers enacted legislation in March of this year to reduce the duration of unemployment insurance (UI) benefits by six weeks (from 26 to 20 weeks). Nearly all states, including Michigan, began offering 26 weeks of UI during the 1950s.

Currently, the Michigan legislature is considering new bills designed to further reduce UI payments for low- and moderate-wage claimants while leaving more unemployed individuals without UI coverage.² The fact that Michigan is now borrowing \$3.1 billion from the federal government to finance state UI payments is being used to justify the benefit cuts.³ Proponents of the new legislation have long-supported UI benefit cuts, even before the current solvency crisis, which they now use as a convenient rationale for further undermining UI.

Some supporters of further cuts also called for irresponsible employer tax breaks in 1995 and 2002 that have contributed to today's solvency crisis. And, as pointed out in another recent NELP report, the UI cuts that have been imposed and proposed will not prevent significant, automatic UI payroll tax increases on employers in Michigan from taking place in 2012 and beyond.⁴

BENEFIT CUTS FINANCE EMPLOYER TAX BREAKS

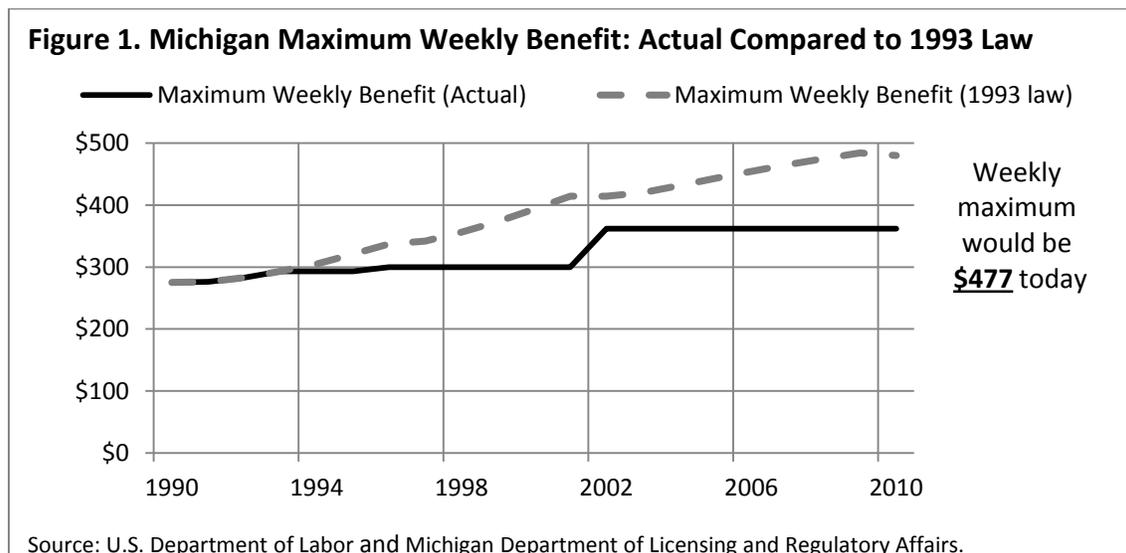
Employer tax breaks during the 1990s and early 2000s were paid for in part by cuts to UI and heightened eligibility restrictions. Business enjoyed a \$750 million tax break between 1996 and 2000, courtesy of workers who sacrificed more than \$350 million in benefits over the same time period.⁵

Historically, Michigan's maximum UI benefit has been tied to a percentage of the state's average weekly wage to ensure that the maximum increased each year in tandem with wage growth and the cost of living. During the early 1990s, however, Michigan moved to cap the maximum weekly benefit at a time when it was equal to 58 percent of the state's average weekly wage. A cap was first imposed in 1994, fixing the weekly maximum at \$293 for two years. The cap was increased to \$300 from 1996 to 2001. In exchange for yet another employer tax break in 2002, the maximum benefit increased to \$362, where it remains today.⁶

Recent History of Maximum Weekly Benefit Amount

- 1989-1993: Maximum weekly benefit tied to 58% of the state average weekly wage.
- 1994-1995: Maximum weekly benefit capped at \$293.
- 1996-2001: Maximum weekly benefit capped at \$300.
- 2002-Today: Maximum weekly benefit capped at \$362.

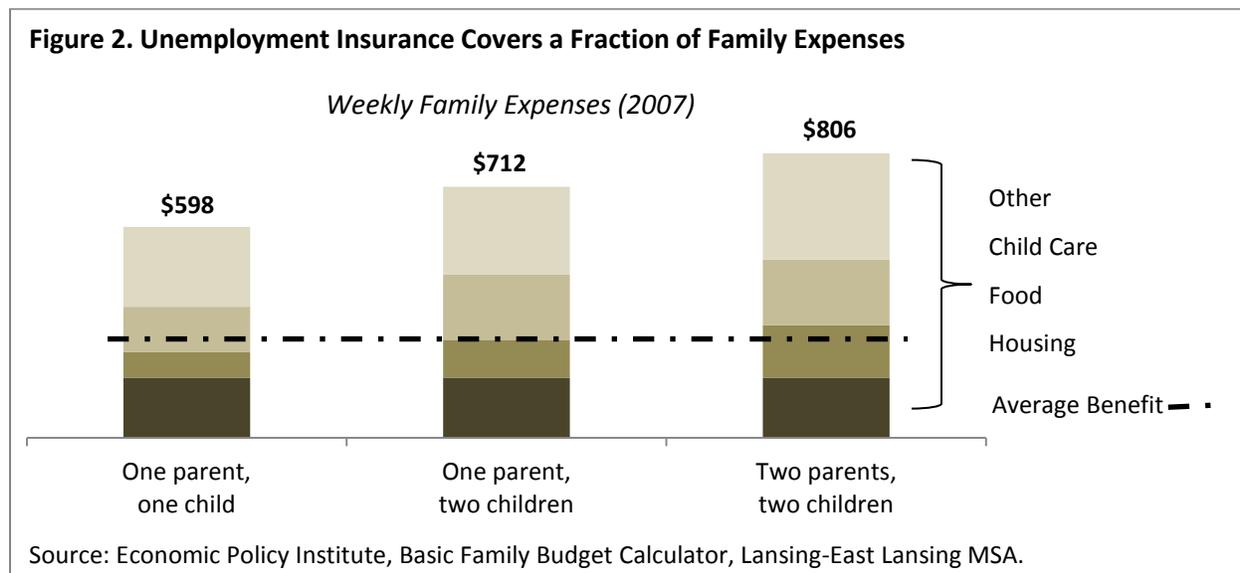
Substituting legislative action for automatic benefit adjustments has meant that UI benefit levels have not kept pace with wage growth in Michigan. Michigan's weekly maximum would be \$477 in 2011 if it was still based upon 58 percent of average wages (**Figure 1**).



Meanwhile, legislation enacted in 1995 and 2002 made other, less visible, changes to UI eligibility. For example, 2002 legislation increased the work and earnings qualifications needed to requalify for UI after an initial disqualification (e.g., for leaving work voluntarily or being discharged for misconduct) and changed the definition of suitable work. The upshot of these restrictions is that fewer unemployed workers have access to benefits in Michigan.

VALUE OF MICHIGAN BENEFITS CONTINUES TO ERODE

As a result of the cap on the maximum weekly benefit, Michigan’s UI payments have failed to keep pace with wage growth and lag behind the majority of other states as a percentage of average weekly wages. Had the 1993 benefit formula been in place today, the maximum weekly amount would be \$477 rather than \$362 (**Figure 1**).



Today, middle- and high-income earners who would qualify for the state’s maximum benefit will find that \$362 a week covers only a fraction of household expenses, while claimants who are not eligible for maximum benefits fare even worse. A family of four surviving on the average weekly benefit (\$293) is unable to afford housing and food (**Figure 2**). Since the maximum benefit was last increased in 2002, the prices of many common consumer goods purchased with UI benefits rose substantially. A gallon of regular gasoline, for example, increased from \$1.35 to \$3.64, while the cost of food jumped by 30 percent.⁷

At just under \$300, Michigan’s average weekly UI payment in 2010 would have left a mother of two below the poverty line. Meanwhile, many workers qualify for far less than the average

amounts due to the state's strict monetary eligibility requirements. For example, a full-time worker earning \$10 an hour, the going rate for many service sector jobs, only qualifies for a weekly benefit of \$213. If the worker finds only 25 hours of work a week, not an unrealistic situation for many low-wage workers, the benefit amount drops to only \$133 a week.

The main reason that state UI benefits have not kept up with the cost of living and wages is for the simple reason that, unlike 36 other states, Michigan does not adjust the maximum benefit for wage growth. On average, benefit amounts total just under \$300 a week due to the fact that a minority of UI claimants actually qualifies for the maximum benefit.⁸ At this rate, benefits replace about 35 percent of the state's average weekly wage, lagging behind 32 other states, including neighboring Ohio, Indiana, and Wisconsin.⁹ With one benefit increase in the last 15 years and no increases over the last nine years, Michigan's unemployed workers have already made substantial financial sacrifices that have limited the drain on the state trust fund.

MICHIGAN WORKERS FACE HISTORIC SACRIFICES

Benefit cuts began in earnest in March 2011, when Michigan lawmakers enacted legislation to reduce UI by six weeks (from a maximum of 26 weeks to 20 weeks for a regular state claim). This change will take effect for new UI claims filed after January 15, 2012. Recently introduced legislation (House Bills 4781 and 4782) will further reduce UI payments for low- and moderate-wage workers through an across-the-board benefit cut while excluding more workers from UI eligibility. These bills moved out of a House committee in June and can move toward passage at any point after the legislature returns from its 2011 summer recess.

How Will Reducing State Benefits by Six Weeks Affect Unemployed Workers?

With benefits capped at 20 weeks, more than one in four UI claimants will run out of benefits before finding work under current labor market conditions.¹⁰ Fewer weeks of benefits could cost unemployed workers an estimated \$300 million a year in foregone UI payments. Additionally, unless federal benefits are reauthorized in 2012, workers who lose their jobs next year will have at most 20 weeks of benefits available.

Michigan could face a cataclysmic situation early next year when thousands of long-term unemployed workers losing federal UI are suddenly forced to compete for scarce positions with job seekers prematurely cut off regular state benefits.

In addition, if Congress does reauthorize federal benefits in 2012, providing only 20 weeks of state UI will result in fewer weeks of federal benefits for Michigan workers because the formula for federal benefits is currently tied to the number of weeks of state UI an individual is eligible to receive.

Michigan Lawmakers Propose Further Cuts

Recent and past UI program history aside, some Michigan lawmakers believe that unemployed workers are due to make more sacrifices. Newly proposed legislation (HB 4781 and HB 4782) would further erode UI benefits by altering the formula used to determine weekly benefit amounts and by preventing other unemployed workers from receiving benefits.

The most damaging legislative proposal is the replacement of the current formula used to determine weekly benefit amounts with a new formula known as 52-week averaging (HB 4781). Claims that the new formula is only meant to address “seasonal” workers are misleading.

No worker will qualify for a larger benefit under the new bill and most will face reductions

1. *All* individuals with base-period earnings under \$40,052 would face a benefit reduction.
2. Under the proposed formula, weekly UI benefits would be lower by 12 to 67 percent for workers earning up to \$35,500. Individuals who did not earn the same amount each week throughout the base period would experience the most significant losses.
3. Currently UI payments replace up to 53.3 percent of lost wages from a worker’s highest quarter of earnings. The proposed formula would lower the maximum replacement rate to 47 percent.
4. Michigan’s jobless workers are threatened with loss of federal Emergency Unemployment Compensation benefits in 2012 if HB 4781 is passed as written.¹¹

After explaining the current benefit formula, the following sections demonstrate how 52-week averaging would cut weekly UI payments for all low- and moderate-wage workers and how the proposal also hurts individuals whose earnings are concentrated in one part of the year.

How Are Weekly UI Payments Determined Under the Current Benefit Formula?

Michigan and 27 other states use a “high-quarter” formula to calculate weekly benefits. Under Michigan law, the weekly amount is equal to 4.1 percent of earnings from the highest calendar quarter in the worker’s four-quarter “base period” that establishes eligibility for UI. As a result,

the current high-quarter formula ensures that weekly UI payments replace 53.3 percent of lost wages from the worker's highest quarter of earnings.¹²

Examples A and B illustrate how weekly benefits and the wage replacement rate are both greater under the existing high-quarter formula than under the proposed 52-week formula.

- **Example A** shows, despite claims to the contrary, that the 52-week formula would lower benefits for individuals who earned the same amount each week throughout their four-quarter base period.
- **Example B** demonstrates how the 52-week formula would substantially lower weekly UI payments for individuals whose prior earnings peaked in a single quarter. Even if wages were slightly higher in one quarter than in the other quarters, as in Example B, the benefit reduction would be significant. In some cases, the reduction could reach 67 percent.

Example A: Evenly Distributed Earnings

Base-Period Earnings of \$20,000 and \$5,000 of earnings in each quarter

CURRENT LAW (High-Quarter Wages)

Weekly Benefit Amount = **\$205** = 4.1% x \$5,000 (High Quarter Wage)

Average Weekly Wage in High Quarter = \$385 = \$5,000/13 weeks

Wage Replacement Rate = **53.3%** = \$205/\$385

PROPOSED BENEFIT FORMULA (52-Week Averaging)

Weekly Benefit Amount = **\$180** = 47% x (\$20,000/52 weeks)

Average Weekly Wage in Base Period = \$385 = \$20,000/52 weeks

Wage Replacement Rate = **47.0%** = \$180/\$385

Example B: Earnings Highest in a Single Quarter

Base-Period Earnings of \$20,000 with \$6,000 of earnings in a single quarter

CURRENT LAW (High-Quarter Wages)

Weekly Benefit Amount = **\$246** = 4.1% x \$6,000 (High Quarter Wage)

Average Weekly Wage in High Quarter = \$462 = \$6,000/13 weeks

Wage Replacement Rate = **53.3%** = \$246/\$462

PROPOSED BENEFIT FORMULA (52-Week Averaging)

Weekly Benefit Amount = **\$180** = 47% x (\$20,000/52 weeks)

Average Weekly Wage in Base Period = \$385 = \$20,000/52 weeks

Wage Replacement Rate = **47.0%** = \$180/\$385

How Are Weekly UI Payments Determined Using the 52-Week Benefit Formula?

Under the benefit formula proposed in HB 4781, weekly UI payments would be 47 percent of weekly earnings averaged over the entire base period. The proposed legislation requires individuals to earn base-period wages of \$40,052 to qualify for the maximum benefit. In comparison, an individual with base-period wages of \$35,318 currently qualifies for the maximum. Claimants with base-period wages over \$40,052 are eligible for the maximum benefit under either benefit formula and are not adversely impacted by the new legislation.

52-Week Formula Reduces Benefits for All Low- and Moderate-Income Workers

The worker described in **Example A** had base-period wages of \$20,000 and earned the same amount (\$5,000) in each quarter. In this example, the 52-week formula would lower the weekly UI payment by \$25 and reduce the wage replacement rate from 53.3 percent to 47 percent. *This pattern holds for all workers with base-period wages less than \$40,052 with the majority facing a 12 percent lower weekly payment (Table 1).* As the following section describes, the benefit reduction is more significant for UI claimants who were not fortunate enough to have earned a consistent wage throughout the entire base period.

Table 1. Impact of 52-Week Averaging on Low- and Moderate-Wage Workers

Annual Wage	Weekly Benefit Amount		Change	
	Current (High Quarter)	Proposal (52-Week Averaging)	Dollar Amount	Percentage
\$15,000	\$153	\$135	-\$18	-12%
\$25,000	\$256	\$225	-\$31	-12%
\$35,000	\$358	\$316	-\$42	-12%

52-Week Formula Amounts to a Substantial Benefit Cut for Non-Salaried Low- and Moderate-Income Workers

Example B illustrates how the 52-week formula will result in a more substantial benefit reduction for UI claimants with earnings concentrated in part of the year. Compared to current law, the weekly benefit amount would fall from \$246 to \$180 for a worker with total base-period earnings of \$20,000 and peak wages of \$6,000 in one quarter. The more wages are concentrated in a single quarter, the larger the differential between current law and the proposed formula (**Table 2**). In some scenarios, weekly benefit amounts could fall by as much as two-thirds or by more than \$240 a week.

Table 2. Impact of 52-Week Averaging on Workers with Wages Concentrated in Part of the Year

Base-Period Wages	Distribution of Wages	Weekly Benefit Amount		
		Current	Proposal	Change
\$15,000	Evenly distributed throughout base period	\$153	\$135	-\$18
	One-third of annual in high quarter	\$205	\$135	-\$70
	One-half of annual in high quarter	\$307	\$135	-\$172
\$25,000	Evenly distributed throughout base period	\$256	\$225	-\$31
	One-third of annual in high quarter	\$341	\$225	-\$116
	One-half of annual in high quarter	\$362	\$225	-\$137
\$35,000	Evenly distributed throughout base period	\$358	\$316	-\$42
	One-third of annual in high quarter	\$362	\$316	-\$46
	One-half of annual in high quarter	\$362	\$316	-\$46

As the 52-week formula averages wages over the entire base period, it penalizes UI claimants who experienced reduced hours or who were out of work because of unemployment, unpaid family or medical leave, or gaps between assignments. Because the 52-week formula has no impact on claimants with base-period earnings of at least \$40,052, it only penalizes unemployed workers who had relatively modest wages throughout their base periods.

For instance, hourly employees in the retail, leisure, and hospitality industries earn relatively low wages, but also face work schedules that can vary widely throughout the year. When these workers lose their jobs, Michigan’s high-quarter benefit formula ensures that their UI payment is based on the time period when they had the most consistent employment. In contrast, the 52-week formula penalizes workers who may have worked every single week throughout the base period, but who worked fewer hours during slow periods.

Proposed Legislation Would Restrict Unemployment Insurance Eligibility

In addition to cutting benefits, HB 4781 and HB 4782 would make it easier to deny UI benefits to unemployed workers who are eligible under existing Michigan law.

Seasonal Employment: Legislation (HB 4781) that purportedly claims to lower benefit amounts for seasonal workers simultaneously strengthens an existing provision that essentially denies seasonal workers UI benefits in the first place. Currently, there is an exception in UI law that allows employers in seasonal industries with work patterns of less than 26 weeks to designate those firms’ workers as “seasonal.” When these seasonal employees are laid off, the wages they earned while in seasonal employment do not count toward UI eligibility. The newly introduced legislation would make it easier for employers to earn the seasonal designation and

Proposed Benefit Formula Puts Federal Benefits at Risk

Due to the state's high unemployment rate, Michigan workers are currently eligible for up to 53 weeks of federal Emergency Unemployment Compensation (EUC) and 20 weeks of federal Extended Benefits (EB). The EUC benefits are paid for by the federal government, but will be at risk if the state adopts the proposed benefit formula.

To qualify for EUC, states cannot do anything to reduce the state's average weekly benefit amount. If passed, HB 4781 would violate this condition and could impact Michigan workers in two ways.

1. If EUC is reauthorized, Michigan workers will not be eligible for any weeks of benefits in 2012.
2. If EUC is not reauthorized, thousands of unemployed workers who would still receive EUC during the phase-out period (through June 9, 2012) will be prematurely cut off.

In 2010, \$3.2 billion of EUC benefits flowed into Michigan's economy. Going forward with benefit cuts will put future federal dollars and the state's economy at risk.

subsequently deny laid-off workers UI benefits. As a result, employers with workforces that include mostly non-seasonal employees will be able to exclude those hired during peak employment periods from UI benefits.

Misconduct: HB 4782 expands the definition of misconduct to include suspension or discharge due to a failure to perform work correctly or meet normal production quotas, and for consistent tardiness or absence without justifiable cause. The legislation directly contradicts a 1961 Michigan Supreme Court Decision (*Carter v. Employment Security Commission*) that interprets misconduct to exclude "mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion...."¹³

This bill would make it possible for employers to fire workers who are unable to meet performance goals and insure that they cannot collect benefits; this runs counter to mainstream unemployment insurance law throughout the country. Under the widely accepted judicial definition of misconduct, the power to fire employees "at will" has not been deemed a sufficient reason to deny workers UI benefits absent intentional or reckless conduct.

Suitable Work: Due to "suitable work" requirements, Michigan UI claimants can lose benefits for not accepting a position paying 70 percent of their gross pay rate in prior employment. HB 4782 lowers this threshold, setting it at 120 percent of a worker's weekly benefit amount. As a result, an engineer who previously earned \$75,000 a year and who was eligible for the

maximum benefit of \$362 a week would be forced to accept work paying under \$11 an hour after 10 weeks of unemployment in 2012. The concept of “suitable work” is intended to ensure that UI recipients are not forced to take jobs far below their prior wage and skill levels. By threatening to cut individuals off UI for refusing to accept wages that are half of what they earned previously, the bill would place downward pressure on wages for all Michigan workers, doing further damage to the state’s economy.

Taken together, these proposed changes would reduce the number of unemployed workers qualifying for UI. While it is difficult to quantify the cost to workers, there is little doubt that many individuals who thought they were covered by UI will be surprised to learn when they go to claim benefits that they are not eligible.

FURTHER BENEFIT CUTS NOT THE SOLUTION

Due to the magnitude of Michigan’s loan balance (\$3.1 billion), UI cuts will not enable employers to avoid state and federal UI payroll tax increases and interest payments in the foreseeable future. Supporters of the enacted and proposed UI cuts have wrongly implied that these changes will immediately lower employer taxes and put the state’s trust fund on the path toward solvency. Potential employer cost savings are greatly overstated. More importantly, benefit cuts alone will not be enough to guarantee the trust fund’s long-term solvency or to ward off future borrowing. Significant UI payroll tax increases must occur to restore solvency.

Michigan’s history of employer UI tax breaks has come at the expense of unemployed workers and the state’s UI trust fund. As a result, Michigan’s UI benefits compare unfavorably to neighboring states and cover a smaller fraction of household expenses than they did during the early 1990s when benefits were tied to wage growth.

Highly indebted states, such as Michigan, would benefit from a federal solution to UI loans. Senator Durbin (D-IL) introduced a bill that would freeze federal tax increases and interest payments for two years, which is the only mechanism that can prevent federal tax increases on Michigan employers. Senator Durbin’s bill would also forgive 60 percent of Michigan’s loan balance, provided the state put forth a long-term plan to finance UI benefits responsibly in the future. Without loan forgiveness, the state will take years to pay back its debt and may never accumulate enough reserves to cope with future economic downturns.

While only Congress can pass federal legislation, state legislators and Governor Snyder in particular are able to influence members of Congress. But rather than work with legislators in

other states and federal partners on a real solution, proponents of HB 4781 and 4782 intend to use the recession and Michigan's UI insolvency as an excuse to further dismantle the state's UI program. The cost of this short-sighted and ineffective approach to workers and the state UI trust fund may not be immediately felt, but will become all too apparent when the next economic recession strikes Michigan.

Authors' Note

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About the National Employment Law Project

The National Employment Law Project is a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting low-wage and unemployed workers. For more than 40 years, NELP has sought to ensure that work is an anchor of economic security and a ladder of economic opportunity for working families across America. In partnership with grassroots and national allies, NELP promotes policies to create good jobs, enforce hard-won workplace rights, and help unemployed workers regain their economic footing. For more about NELP, please visit www.nelp.org.

ENDNOTES

¹ U.S. Department of Labor, Local Area Unemployment Statistics, Michigan unemployment rate and employment for April to July 2011, accessed September 8, 2011.

² The House bills discussed here are HB 4781 and 4782. The companion bills in the Senate are SB 500 and 501.

³ U.S. Department of Labor, Outstanding Loans from the Federal Unemployment Account, Balances as of July 28, 2011, <http://www.workforcesecurity.doleta.gov/unemploy/budget.asp#tloans>.

⁴ See National Employment Law Project, "Can't Get There From Here: Facing Reality in Financing Michigan's Unemployment Insurance Program" (August 2011) available at http://www.nelp.org/page/-/UI/2011/MI_UI_Report_Cant_Get_There_From_Here.pdf?nocdn=1.

⁵ Public Act 25 of 1995 capped the maximum weekly benefit amount at \$300 and lowered employer tax rates. When the law went into effect in 1996 the Michigan Employment Security Commission estimated that from 1996-2000 there would be a net tax savings of \$748 million and a net benefit reduction of \$354 million. These estimates were published by the House Legislative Analysis Section, Third Analysis of House Bill 5763 as enrolled, Public Act 192 of 2002, <http://www.legislature.mi.gov/documents/2001-2002/billanalysis/House/pdf/2001-HLA-5763-d.pdf>. The continuing financial impact of the 1995 changes has continued to the present, but has not been estimated to our knowledge.

⁶ Public Act 25 of 2002 decreased the amount of wages subject to taxation from \$9,500 to \$9,000.

⁷ Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers, Food at Home (seasonally adjusted) for July 2002 and July 2011 and U.S. Department of Energy, Retail Gasoline Historical Prices, United States, Weekly U.S. Regular Conventional Retail Gasoline Prices(Dollars per Gallon) for first week of September 2002 and September 2011.

⁸ Department of Licensing and Regulatory Affairs, Unemployment Insurance Agency, CY 2010 Statistical Highlights for Michigan's Unemployment Benefit Program, http://www.michigan.gov/documents/uia/fs82_178779_7.pdf.

⁹ U.S. Department of Labor, Quarterly Program and Financial Data (1st Quarter 2011), http://www.workforcesecurity.doleta.gov/unemploy/content/data_stats/datasum11/DataSum_2011_1.pdf.

¹⁰ NELP analysis of state duration data. Available upon request.

¹¹ If Emergency Unemployment Compensation (EUC) is reauthorized and the proposed benefit cuts in HB 4781 are enacted, unemployed Michigan workers will not be eligible for EUC in 2012. The overall impact will depend on whether or not the federal Emergency Unemployment Compensation (EUC) program is reauthorized for 2012. Even if EUC is not reauthorized, unemployed workers are still able to finish out the EUC tier they are on when the program starts phasing out at the end of 2011. If Michigan enacts the proposed benefit formula in HB 4781, EUC recipients will not be able to complete their tier due to an immediate EUC cut off under the so-called "non-reduction rule." For more information see U.S. Department of Labor, Unemployment Insurance Program Letter No. 04-10, Change 7, available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2969. In short, even though the change in benefit formula would impact new claims beginning on or after January 15, 2012, the result would be that ALL of Michigan's unemployed workers will be ineligible for up to 53 weeks of federal benefits through the Emergency Unemployment Compensation (EUC) program in 2012.

¹² Because the weekly benefit amount is capped at \$362, the replacement rate steadily declines as high-quarter wages exceed \$8,830 (the minimum amount of earnings required to receive the maximum payment).

¹³ Michigan Reports vol. 364, p. 538 at 541; Northwest Reports, 2d vol. 111, p. 817 (Mich. 1961).