



ANALYSIS OF THE NEW JERSEY BUDGET

**DEPARTMENT OF LABOR
AND
WORKFORCE DEVELOPMENT**

FISCAL YEAR

2015 - 2016

**PREPARED BY OFFICE OF LEGISLATIVE SERVICES
NEW JERSEY LEGISLATURE • APRIL 2015**

NEW JERSEY STATE LEGISLATURE

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DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

Budget Pages..... C-5, C-12 to C-13, C-20,
D-219 to D-239

Fiscal Summary (\$000)

	Expended FY 2014	Adjusted Appropriation FY 2015	Recommended FY 2016	Percent Change 2015-16
State Budgeted	\$208,862	\$166,718	\$166,718	—
Federal Funds	\$425,149	\$500,564	\$490,237	(2.1%)
<u>Other</u>	<u>\$196,342</u>	<u>\$285,168</u>	<u>\$291,106</u>	<u>2.1%</u>
Grand Total	\$830,353	\$952,450	\$948,061	(0.5%)

Personnel Summary - Positions By Funding Source

	Actual FY 2014	Revised FY 2015	Funded FY 2016	Percent Change 2015-16
State	462	445	447	0.4%
Federal	2,351	2,267	2,267	—
<u>Other</u>	<u>357</u>	<u>343</u>	<u>349</u>	<u>1.7%</u>
Total Positions	3,170	3,055	3,063	0.3%

FY 2014 (as of December) and revised FY 2015 (as of January) personnel data reflect actual payroll counts. FY 2016 data reflect the number of positions funded.

Link to Website: <http://www.njleg.state.nj.us/legislativepub/finance.asp>

Highlights

- The FY 2016 Budget Recommendation for the Department of Labor and Workforce Development (DLWD) of \$948.1 million reflects a \$4.4 million (0.5 percent) decrease, compared to the FY 2015 adjusted appropriation of \$952.5 million. Over half of the DLWD's funding comes from the federal government; \$490.2 million (or 51.7 percent). The remainder consists of dedicated revenues, including transfers from special revenue and proprietary funds, \$291.1 million (or 30.7 percent), and State General Fund and Casino Revenue Fund appropriations, \$166.7 million (or 17.5 percent).
- The FY 2016 Budget Recommendation proposes a \$166.7 million State appropriation which is identical to the FY 2015 adjusted State appropriation.
- The FY 2016 Budget Recommendation proposes an increase of \$11 million (213.6%) in appropriations from the Unemployment Compensation Auxiliary Fund to support Unemployment Insurance (UI) collection activities as well as costs associated with certain State required notifications to UI claimants. According to the department, the increase in funding from the Unemployment Compensation Auxiliary Fund is necessary to offset an anticipated \$12.03 million (6.3%) reduction in federal funds for UI administration. The department will use the increased appropriation from the Unemployment Compensation Auxiliary Fund to maintain its current response level to claims and manage its existing workload.
- The FY 2016 Budget Recommendation includes language authorizing \$9.1 million in FY 2016 appropriations from the Unemployment Compensation Auxiliary Fund to support Vocational Rehabilitation Services, a \$5 million (35.7%) decrease from the amount authorized in FY 2015 for the same purpose. This decrease reflects a shift in appropriations from the Unemployment Compensation Auxiliary Fund to the Workforce Development Partnership Fund for Vocational Rehabilitation Services. According to the department, this shift is necessary to offset a reduction in appropriations from the Unemployment Compensation Auxiliary Fund for Vocational Rehabilitation attributable to increased demands on the Unemployment Compensation Auxiliary Fund related to Unemployment Insurance program administration as a result of a reduction in federal funding for Unemployment Insurance.
- The FY 2016 Budget Recommendation includes a \$5 million decrease in "All Other Funds" for Vocational Rehabilitation Services. This decrease reflects the removal of existing budget language, which authorized \$5 million in appropriations from the Workforce Development Partnership Fund to provide additional support for Extended Employment Services after the transfer of these Extended Employment Services from the Department of Human Services to the Department of Labor and Workforce Development.

Highlights (Cont'd)

- Despite budget language that offsets a reduction in funding for Vocational Rehabilitation Services from the Unemployment Compensation Auxiliary Fund by shifting the appropriation to the Workforce Development Partnership Fund, the removal of existing budget language, which appropriated an additional \$5 million from the Workforce Development Partnership Fund for Vocational Rehabilitation Services in FY 2015, reduces total funding for Vocational Rehabilitation Services in FY 2016 by \$5 million.
- Supplementary budget information (contained on page 134 of the “Other Governmental Funds and Proprietary Funds” section of the FY 2016 Budget Recommendation, available in the online version only) indicates that the unemployment insurance compensation trust fund (UI trust fund) will have a balance of \$1.3 billion at the beginning of FY 2016. The fund anticipates revenues of \$2.8 billion in FY 2016 and expenditures of \$2.6 billion for benefits and administrative costs. The balance at the end of FY 2016 is anticipated to be \$1.6 billion.
- As of March 2014, the State had an outstanding balance of \$378 million owed to the federal Unemployment Trust Fund. The State had borrowed from the federal Unemployment Trust Fund beginning in March, 2009 in order to pay benefit claims when the State Unemployment Insurance fund became depleted. Employers were paying higher State UI taxes and an additional annual assessment to reimburse the federal government for the principal and interest on the State loan. On May 1, 2014, the State paid off the entire principal of the loan and thus the May 2014 assessment on employers was the last imposed for this debt.

Background Paper

- The Transfer of Extended Employment Services from DHS to DLWD..... p. 15

Fiscal and Personnel Summary

AGENCY FUNDING BY SOURCE OF FUNDS (\$000)

	Expended FY 2014	Adj. Approp. FY 2015	Recom. FY 2016	Percent Change	
				2014-16	2015-16
General Fund					
Direct State Services	\$140,660	\$93,994	\$93,994	(33.2%)	0.0%
Grants-In-Aid	\$66,006	\$70,528	\$70,528	6.9%	0.0%
State Aid	0	0	0	0.0%	0.0%
Capital Construction	0	0	0	0.0%	0.0%
Debt Service	0	0	0	0.0%	0.0%
Sub-Total	\$206,666	\$164,522	\$164,522	(20.4%)	0.0%
Property Tax Relief Fund					
Direct State Services	\$0	\$0	\$0	0.0%	0.0%
Grants-In-Aid	0	0	0	0.0%	0.0%
State Aid	0	0	0	0.0%	0.0%
Sub-Total	\$0	\$0	\$0	0.0%	0.0%
Casino Revenue Fund	\$2,196	\$2,196	\$2,196	0.0%	0.0%
Casino Control Fund	\$0	\$0	\$0	0.0%	0.0%
State Total	\$208,862	\$166,718	\$166,718	(20.2%)	0.0%
Federal Funds	\$425,149	\$500,564	\$490,237	15.3%	(2.1%)
Other Funds	\$196,342	\$285,168	\$291,106	48.3%	2.1%
Grand Total	\$830,353	\$952,450	\$948,061	14.2%	(0.5%)

PERSONNEL SUMMARY - POSITIONS BY FUNDING SOURCE

	Actual FY 2014	Revised FY 2015	Funded FY 2016	Percent Change	
				2014-16	2015-16
State	462	445	447	(3.2%)	0.4%
Federal	2,351	2,267	2,267	(3.6%)	0.0%
All Other	357	343	349	(2.2%)	1.7%
Total Positions	3,170	3,055	3,063	(3.4%)	0.3%

FY 2014 (as of December) and revised FY 2015 (as of January) personnel data reflect actual payroll counts. FY 2016 data reflect the number of positions funded.

AFFIRMATIVE ACTION DATA

Total Minority Percent	43.2%	45.3%	---	---	---
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Significant Changes/New Programs (\$000)

<u>Budget Item</u>	<u>Adj. Approp. FY 2015</u>	<u>Recomm. FY 2016</u>	<u>Dollar Change</u>	<u>Percent Change</u>	<u>Budget Page</u>
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ECONOMIC PLANNING AND DEVELOPMENT

FEDERAL FUNDS

Research and Information	\$8,895	\$7,620	(\$1,275)	(14.3%)	D-225
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The FY 2016 Budget Recommendation anticipates a decrease of \$1.28 million (14.3%) in federal funds for the support of the Office of Research and Information in the Department of Labor and Workforce Development (DLWD).

The Office is comprised of the following areas: Labor and Market Demographic Research; Program Planning, Analysis and Evaluation; the Center for Occupational Employment Information; and One Stop Data and Analysis.

ECONOMIC ASSISTANCE AND SECURITY

FEDERAL FUNDS

Unemployment Insurance	\$167,566	\$157,455	(\$10,111)	(6.0%)	D-229
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The FY 2016 Budget Recommendation anticipates an appropriation of \$157.5 million for Unemployment Insurance (UI) program administration, a decrease of \$10.1 million (6%). The reduction is attributable to the federal government anticipating lower costs for UI administration in FY 2016.

During the "Great Recession," the national and State UI systems were severely tested. New Jersey, as well as the rest of the nation, experienced high unemployment, which steadily rose from 4.6 percent in January, 2008 to a peak of 10 percent in December, 2010 and is currently 7.1 percent (February, 2014). Since 2008, unprecedented amounts of benefits, funded through the State's UI trust fund and federally supported extended benefits, were paid to unemployed individuals. The State paid out \$1.86 billion in UI benefits in 2007, the year before the recession began, peaking at \$3.48 billion in 2009, and then slowly decreasing to \$2.4 billion in 2013. These amounts were in addition to the extended benefits provided by the federal government which were paid from 2008 to 2013. As of December 31, 2013, the federal government was no longer providing additional benefits.

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2015</u>	<u>Recomm.</u> <u>FY 2016</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
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The need for additional staff to administer these benefits resulted in the DLWD hiring temporary intermittent staff to ensure enough personnel for UI claims approval and the appeals systems. These additional staff resulted in higher administrative costs for the UI program. The economy is slowly recovering and there has been no extension of federal UI benefits at this time. These two circumstances should have resulted in lower UI administrative costs for the State in FY 2016 and thus, a lower federal reimbursement for UI administrative costs in FY 2016. However, the department has indicated that it is still experiencing an increased UI workload, despite the recovery, and is focused on maintaining claim response levels. In order for the department to maintain its current level of operation, the FY 2016 Budget Recommendation includes an increase of \$11 million (213.6%) from the Unemployment Compensation Auxiliary Fund for Unemployment Insurance program administration to offset the reduction in federal funding.

ALL OTHER FUNDS

Unemployment Insurance	\$5,150	\$16,150	\$11,000	213.6%	D-229
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The FY 2016 Budget Recommendation proposes an increase of \$11 million (213.6%) in appropriations from the Unemployment Compensation Auxiliary Fund to support Unemployment Insurance (UI) collection activities as well as costs associated with certain State required notifications to UI claimants. According to the department, the increase in funding from the Unemployment Compensation Auxiliary Fund is necessary to offset an anticipated \$12.03 million (6.3%) reduction in federal funds for UI administration. The department will use the increased appropriation from the Unemployment Compensation Auxiliary Fund to maintain its current response level to claims and manage its existing workload.

The Unemployment Compensation Auxiliary Fund, established in subsection (g) of N.J.S.A.43:21-14, is a repository for all interest and penalties imposed upon employers for violation of unemployment insurance regulations. Moneys from the Unemployment Compensation Auxiliary Fund are to be used for the cost of the administration of the UI trust fund, for the repayment of any interest bearing advances made for the federal unemployment account and for essential and necessary expenditures in connection with programs, as determined by the commissioner.

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2015</u>	<u>Recomm.</u> <u>FY 2016</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
<u>MANPOWER AND EMPLOYMENT SERVICES</u>					
All OTHER FUNDS					
Vocational Rehabilitation Services	\$5,000	\$0	\$5,000	(100.0%)	D-234

The FY 2016 Budget Recommendation includes a \$5 million decrease in “All Other Funds” for Vocational Rehabilitation Services. This decrease reflects the removal of existing budget language, which authorized \$5 million in appropriations from the Workforce Development Partnership Fund to provide additional support for Extended Employment Services after the transfer of these Extended Employment Services from the Department of Human Services (DHS) to the Department of Labor and Workforce Development. The existing budget language was inserted into the FY 2015 Appropriations Act by the Legislature prior to the end of the budget process.

Despite budget language that offsets a reduction in funding for Vocational Rehabilitation Services from the Unemployment Compensation Auxiliary Fund by shifting the appropriation to the Workforce Development Partnership Fund, the removal of existing budget language, which appropriated an additional \$5 million from the Workforce Development Partnership Fund for Vocational Rehabilitation Services in FY 2015, reduces total funding for Vocational Rehabilitation Services in FY 2016 by \$5 million.

The FY 2015 Appropriations Act included a \$5.54 million shift in Grants-in-Aid funding for Vocational Rehabilitation Services from the Division of Developmental Disabilities in DHS to the Division of Vocational Rehabilitation Services in DLWD. This shift reflected the implementation of a plan required by language included in the FY 2014 Appropriations Act (see page B-117 of the FY 2014 Appropriations Handbook). The language directed the Commissioner of Human Services and the Commissioner of Labor and Workforce Development to jointly develop a plan for the transition of extended employment services, also referred to as Sheltered Workshop services, and related ancillary services from the DHS to the DLWD.

The FY 2014 language requiring development of a plan was necessary because DHS had developed new guidelines that proposed eliminating the funding for clients who chose to be employed in extended employment programs, as opposed to community settings during the day. The language required that all clients currently choosing to be employed in extended employment programs and receiving services from DHS had to continue to be able to access extended employment programs and be provided transportation to these programs. Additionally, any new clients served by DHS had to be provided with the opportunity to access extended employment programs and be provided transportation to these programs.

Significant Language Changes

Administration and Support Services

Revision

2015 Handbook: p. B-119
2016 Budget: p. D-226

Notwithstanding the provisions of any law or regulation to the contrary, in addition to the amount hereinabove appropriated for Administration and Support Services, there is appropriated ~~\$460,000~~ \$470,000 from the New Jersey Builders Utilization Initiative for Labor Diversity, pursuant to P.L. 2009 c.313 (C.52:38-7), for enforcing the provisions of P.L. 2009 c.335 (C.52:40-1 et seq.).

Explanation

The FY 2016 Budget Recommendation revises an existing language provision to authorize a \$10,000 increase in the appropriation from the New Jersey Builders Utilization Initiative for the Labor Diversity (NJ BUILD) account for Administrative and Support Services, from \$460,000 in FY 2015 to \$470,000 in FY 2016. According to the Department of Labor and Workforce Development (DLWD), the increase in these funds will be used for related costs of the Office of Contract Compliance and Equal Employment Opportunity in Public Contracts (Office) located in the DLWD.

P.L.2009, c.335 (C.52:40 -1 et seq.) requires the Office to determine whether each of the State entities whose performance it monitors has properly allocated and released to the DLWD, as authorized by P.L. 2009, c. 313 (C.52:38-7 et seq.), one-half of one percent of the total cost of a construction contract of \$1,000,000 or more, to be used by the DLWD for the NJBUILD program to train minorities and women for employment in construction trades. The transferred funds are deposited into what is known as the NJ BUILD account.

The DLWD is required to use the transferred funds to provide on-the-job or off-the-job outreach and training programs, including programs of preparation for admission into registered apprenticeships for minority group members and women in the construction trades, which foster opportunities for long-term trade and professional employment, providing economic self-sufficiency for minority group members and women. Additionally, pursuant to the statute, the Office is tasked with ensuring that businesses contracting with the State are abiding by reporting requirements and contractual obligations regarding the use of small and minority and women-owned businesses.

According to the State accounting system, the NJ BUILD account has approximately \$983,505 in uncommitted funds as of April 1, 2015. In response to the OLS Discussion Points during the FY 2015 budget process, the DLWD reported that approximately \$17.4 million collected for the NJ BUILD fund had not been used for its intended purpose, but rather was lapsed to the General Fund from FY 2010 through FY 2014. Information provided by the State Treasurer indicates the intent to lapse an additional \$800,000 in NJ BUILD funds at the close of FY 2015.

EXPLANATION: FY 2015 language not recommended for FY 2016 denoted by strikethrough.
Recommended FY 2016 language that did not appear in FY 2015 denoted by underlining.

Significant Language Changes (Cont'd)

Unemployment Compensation Auxiliary Fund	
Revision	2015 Handbook: p. B-121 2016 Budget: p. D-229

In addition to the amounts hereinabove appropriated, there is appropriated ~~from~~ out of the Unemployment Compensation Auxiliary Fund, an amount not to exceed ~~\$5,000,000~~ \$16,000,000 to support collection activities in the program as well as costs associated with certain State required notifications to Unemployment Insurance claimants and for the support of the workforce development system, subject to the approval of the Director of the Division of Budget and Accounting.

Explanation

The FY 2016 Budget Recommendation includes language increasing, by \$11.0 million (213.6%), the amount appropriated from the Unemployment Compensation Auxiliary Fund to support Unemployment Insurance (UI) collection activities as well as costs associated with certain State required notifications to UI claimants. According to the department, the increase in funding from the Unemployment Compensation Auxiliary Fund is necessary to offset an anticipated \$12.03 million (6.3%) reduction in federal funds for UI administration. The department will use the increased appropriation from the Unemployment Compensation Auxiliary Fund to maintain its current response level to claims and manage its existing workload.

The Unemployment Compensation Auxiliary Fund, established in subsection (g) of N.J.S.A.43:21-14, is a repository for all interest and penalties imposed upon employers for violation of unemployment insurance regulations. Moneys from the Unemployment Compensation Auxiliary Fund are to be used for the cost of the administration of the UI trust fund, for the repayment of any interest bearing advances made for the federal unemployment account and for essential and necessary expenditures in connection with programs, as determined by the commissioner.

EXPLANATION: FY 2015 language not recommended for FY 2016 denoted by strikethrough.
Recommended FY 2016 language that did not appear in FY 2015 denoted by underlining.

Significant Language Changes (Cont'd)

State Disability Benefits Fund	
Revision	2015 Handbook: p. B-121 2016 Budget: p. D-229

In addition to the amounts hereinabove appropriated for the State Disability Insurance Plan and the Private Disability Insurance Plan, there are appropriated from the State Disability Benefits Fund such additional amounts as may be required to administer the State Disability Insurance Plan and the Private Disability Insurance Plan.

Explanation

The FY 2016 Budget Recommendation revises existing language to authorize such additional amounts as may be required from the State Disability Benefits Fund for administration of the State Disability Insurance Plan. According to the department, the revision clarifies the existing process of charging administrative costs for the State Disability Insurance Plan to the expenses of the fund.

The State Disability Benefits Fund is used by the State’s Temporary Disability Insurance program to provide partial wage replacement for workers who become disabled due to injury or illness unrelated to work and to pay for administration of the benefits from the State Disability Benefits Fund. Those New Jersey employers that do not wish to participate in the State plan may offer an alternative private plan that provides, at a minimum, the coverage offered through the State plan.

Until 2012, the State Disability Benefits Fund was funded by two revenue sources, a 0.5 percent wage tax paid by employees and an experience rating tax applied to wages paid by employers. P.L.2011, c.88 (C. 43:21-7 et al) requires that, for calendar year 2012 and each subsequent calendar year, a determination be made by the Commissioner of Labor and Workforce Development of the annual rate of contribution to be paid by employees into the State Disability Benefits Fund. The rate will equal that amount which is sufficient, when added to employer contributions, to obtain a total amount of contributions equal to 120% of the benefits estimated by the commissioner to be payable for temporary disability leave benefits during the next calendar year, plus an amount equal to 100 percent of the cost of the administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the fund at the end of the preceding calendar year. The act also limits the rate of employee contributions which may be charged under a private plan for disability benefits to not higher than the rate of employee contributions to the State Disability Benefits Fund set pursuant to the act. The rate for employees for CY 2015 is 0.025 percent.

EXPLANATION: FY 2015 language not recommended for FY 2016 denoted by strikethrough.
Recommended FY 2016 language that did not appear in FY 2015 denoted by underlining.

Significant Language Changes (Cont'd)**Unemployment Insurance**

Revision

2015 Handbook: p.
2016 Budget: p. D-230

From the funds made available to the State under section 903(d)(4) of the Social Security Act (42 U.S.C.s.1103 et seq.), as amended, the sum of \$22,000,000 or so much thereof as may be necessary, is appropriated for the continued maintenance and improvement of services to unemployment insurance claimants through the improvement and modernization of the benefit payment system and other technology improvements and to employment service clients through the continued development and maintenance of one-stop offices throughout the State and other investments in technology, processes and services that will enhance job opportunities for clients.

Explanation

The FY 2016 Budget Recommendation includes new language that appropriates \$22,000,000, or so much as may be necessary, from funds made available to the State under section 903(d)(4) of the Social Security Act (42 U.S.C.s.1103 et seq.), as amended, more commonly known as "Reed Act" funds. The funds would be used to improve the benefit payment system, continue to develop one-stop offices throughout the State, and enhance processes and services that provide job opportunities for clients.

In response to previous OLS Discussion Points in FY 2012 and FY 2013, the department stated that it had engaged a consultant "to perform a gap analysis of the Functional Design produced by the prior vendor to determine the order steps that need to be taken to achieve modernization and the level of IT resources needed to implement and maintain the modernization initiative. The modernization initiative will be done in a series of phases and an estimated level of effort and costs associated with each phase is a deliverable expected from the consultant." Additionally, the department stated that, based on a "Statement of Work" a "Request for Information" was prepared in October 2012 and 12 vendors responded to the "Request for Information." In March 2013, the department assigned two Office of Information Technology representatives to work with the department's Project Management Office on the implementation of a modernized Unemployment Insurance system. The department further stated that the project would be funded through Reed Act monies and supplemental federal appropriations would be sought if needed.

The department indicated, in response to OLS Discussion Points during the FY 2015 budget process, that a consortium was formed with the State of New York to jointly modernize each state's employer/benefits/appeals system. Prior to the end of 2014, the New York and New Jersey partners anticipated that the project would enter Phase II. Phase II is the development and implementation of a fully functional modernization of the Unemployment Insurance systems for both states. The federal Department of Labor advised both states that, should the consortium proceed with Phase II, a second Supplemental Budget Request could be submitted to the federal Department of Labor for approval.

EXPLANATION: FY 2015 language not recommended for FY 2016 denoted by strikethrough.
Recommended FY 2016 language that did not appear in FY 2015 denoted by underlining.

Significant Language Changes (Cont'd)

Vocational Rehabilitation (Workforce Development Partnership Fund)

Revision

2015 Handbook: p. B-125
2016 Budget: p. D-236

Notwithstanding the provisions of any law or regulation to the contrary, of the amount hereinabove appropriated for Vocational Rehabilitation Services, there is appropriated ~~\$9,000,000~~ \$14,000,000 from the Workforce Development Partnership Fund.

Explanation

The FY 2016 Budget Recommendation includes language authorizing \$14.0 million in FY 2016 appropriations from the Workforce Development Partnership Fund to support Vocational Rehabilitation Services, a \$5 million (55.6%) increase from the amount authorized in FY 2015 for the same purpose. This increase reflects a shift in appropriations from the Unemployment Compensation Auxiliary Fund to the Workforce Development Partnership Fund for Vocational Rehabilitation Services. According to the department, the appropriation from the Workforce Development Partnership Fund is necessary to offset a decrease in appropriations from the Unemployment Compensation Auxiliary Fund for Vocational Rehabilitation attributable to increased demands on the Unemployment Compensation Auxiliary Fund for Unemployment Insurance program administration as a result of a reduction in federal funding for Unemployment Insurance.

Despite budget language that offsets a reduction in funding for Vocational Rehabilitation Services from the Unemployment Compensation Auxiliary Fund by shifting the appropriation to the Workforce Development Partnership Fund, the removal of existing budget language, which appropriated an additional \$5 million from the Workforce Development Partnership Fund for Vocational Rehabilitation Services in FY 2015, reduces total funding for Vocational Rehabilitation Services in FY 2016 by \$5 million.

Workforce Development Partnership Fund:

The New Jersey Workforce Development Partnership Fund was created pursuant to P.L.1992, c.43 (C.34:15D-1 et seq.) to provide training grants to disadvantaged and displaced workers and to employers to provide training to their employees. The Workforce Development Partnership program is funded by worker and employer payroll taxes on wages subject to UI taxes.

The Workforce Development Partnership Fund moneys are statutorily allocated as follows: Customized Training, 45 percent; Individual Training Grants for Dislocated Workers, 25 percent; Individual Training Grants for Disadvantaged Workers, 6 percent; Occupational Safety and Health Training, 3 percent; Youth Transitions to Work Program, 5 percent; administration, 10.5 percent; and individual programs approved by the Commissioner, 5.5 percent.

EXPLANATION: FY 2015 language not recommended for FY 2016 denoted by strikethrough.
Recommended FY 2016 language that did not appear in FY 2015 denoted by underlining.

Significant Language Changes (Cont'd)

Vocational Rehabilitation Services:

The Governor’s FY 2016 Budget Recommendation provides \$42.648 million in Grants-in-Aid funding for Vocational Rehabilitation Services, of which \$14 million is appropriated through budget language from the Workforce Development Partnership Fund (D-236) and \$9.114 million is appropriated from the Unemployment Compensation Auxiliary Fund (D-236). Grants-In-Aid funding for Vocational Rehabilitation Services is awarded to community service providers to support programs such as: Sheltered Workshop Transportation; Supported Employment Services; Sheltered Workshop Support; and Independent Living Centers.

Vocational Rehabilitation (Unemployment Compensation Auxiliary Fund)	
Revision	2015 Handbook: p. B-125 2016 Budget: p. D-236

Of the amount hereinabove appropriated for the Vocational Rehabilitation Services program classification, an amount not to exceed ~~\$14,114,000~~ \$9,114,000 is appropriated from the Unemployment Compensation Auxiliary Fund.

Explanation

The FY 2016 Budget Recommendation includes language authorizing \$9.1 million in FY 2016 appropriations from the Unemployment Compensation Auxiliary Fund to support Vocational Rehabilitation Services, a \$5 million (35.7%) decrease from the amount authorized in FY 2015 for the same purpose. This decrease reflects a shift in appropriations from the Unemployment Compensation Auxiliary Fund to the Workforce Development Partnership Fund for Vocational Rehabilitation Services. According to the department, this shift is necessary to offset a reduction in appropriations from the Unemployment Compensation Auxiliary Fund for Vocational Rehabilitation attributable to increased demands on the Unemployment Compensation Auxiliary Fund related to Unemployment Insurance program administration as a result of a reduction in federal funding for Unemployment Insurance.

The Unemployment Compensation Auxiliary Fund, established in subsection (g) of N.J.S.A.43:21-14, is a repository for all interest and penalties imposed upon employers for violation of unemployment insurance regulations. Moneys from the Unemployment Compensation Auxiliary Fund are to be used for the cost of the administration of the UI trust fund, for the repayment of any interest bearing advances made for the federal unemployment account and for essential and necessary expenditures in connection with programs, as determined by the commissioner.

EXPLANATION: FY 2015 language not recommended for FY 2016 denoted by strikethrough.
Recommended FY 2016 language that did not appear in FY 2015 denoted by underlining.

Significant Language Changes (Cont'd)

Extended Employment	
Revision	2015 Handbook: p. B-125 2016 Budget: p.

~~In addition to the amount hereinabove appropriated for Vocational Rehabilitation Services, there is appropriated \$5,000,000 from the Workforce Development Partnership Fund for Extended Employment (Center based jobs), Extended Employment Transportation, and Long-Term Follow Along Services.~~

Explanation

The FY 2016 Budget Recommendation removes existing language authorizing \$5.0 million in appropriations from the Workforce Development Partnership Fund to provide additional support for Extended Employment Services after the transfer of these Extended Employment Services from the Department of Human Services (DHS) to the Department of Labor and Workforce Development (DLWD). The existing budget language was inserted into the FY 2015 Appropriations Act by the Legislature prior to the end of the budget process.

Despite budget language that offsets a reduction in funding for Vocational Rehabilitation Services from the Unemployment Compensation Auxiliary Fund by shifting the appropriation to the Workforce Development Partnership Fund, the removal of existing budget language, which appropriated an additional \$5 million from the Workforce Development Partnership Fund for Vocational Rehabilitation Services in FY 2015, reduces total funding for Vocational Rehabilitation Services in FY 2016 by \$5 million.

The FY 2015 Appropriations Act included a \$5.54 million shift in Grants-in-Aid funding for Vocational Rehabilitation Services from the Division of Developmental Disabilities in DHS to the Division of Vocational Rehabilitation Services in DLWD. This shift reflected the implementation of a plan required by language included in the FY 2014 Appropriations Act (see page B-117 of the FY 2014 Appropriations Handbook). The language directed the Commissioner of Human Services and the Commissioner of Labor and Workforce Development to jointly develop a plan for the transition of extended employment services, also referred to as Sheltered Workshop services, and related ancillary services from the DHS to the DLWD.

The FY 2014 language requiring development of a plan was necessary because DHS had developed new guidelines that proposed eliminating the funding for clients who chose to be employed in extended employment programs, as opposed to community settings during the day. The language required that all clients currently choosing to be employed in extended employment programs and receiving services from DHS had to continue to be able to access extended employment programs and be provided transportation to these programs. Additionally, any new clients served by DHS had to be provided with the opportunity to access extended employment programs and be provided transportation to these programs.

EXPLANATION: FY 2015 language not recommended for FY 2016 denoted by strikethrough.
Recommended FY 2016 language that did not appear in FY 2015 denoted by underlining.

Background Paper: The Transfer of Extended Employment Services from DHS to DLWD

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Introduction/Overview

In March 2013, the Department of Human Services (DHS) released a fact sheet indicating that the Division of Developmental Disabilities would phase out funding for services provided in extended employment settings, instead preserving funding for services provided to individuals with developmental disabilities through community-integrated programs. Extended employment services, formerly known as “sheltered workshops,” are occupation oriented facilities operated by non-profit agencies, which, except for staff, employ only individuals with disabilities. Community-integrated employment refers to jobs held by individuals with disabilities in workplace settings where the majority of persons employed are not persons with disabilities.¹

At the request of members of the Legislature, Commissioner of Human Services Jennifer Velez indicated that the department would consider various options for addressing concerns regarding the continuation of the Division of Developmental Disabilities’ extended employment services, including transferring these extended employment services to the Division of Vocational Rehabilitation Services in the Department of Labor and Workforce Development (DLWD). Pursuant to language contained in the FY 2014 Appropriations Act, the Commissioner of Human Services and the Commissioner of Labor and Workforce Development were required to develop and submit a joint plan, by January 1, 2014, to the Joint Budget Oversight Committee to execute the transfer of services from the Division of Developmental Disabilities in DHS to the Division of Vocational Rehabilitation Services in DLWD.

On April 22, 2014, Commissioner of Labor and Workforce Development Harold J. Wirths submitted a plan on behalf of DLWD and Commissioner Velez, detailing the transfer of \$5.54 million from the Division of Developmental Disabilities to the Division of Vocational Rehabilitation Services to support extended employment for 710 individuals and transportation assistance for 569 individuals.² The transfer of extended employment services was completed in the FY 2015 Appropriation Act, accounting for a transfer of \$5.54 million from the Division of Developmental Disabilities in DHS to the Division of Vocational Rehabilitation Services in DLWD.

Rationale for Program Transfer

On March 18, 2013, DHS released a memo titled “Upcoming Changes to the Division of Developmental Disabilities’ Policy on Funding of Sheltered Workshops.” The memo discussed the department’s rationale for phasing-out funding for services provided by the Division of Developmental Disabilities in extended employment settings. The rationale

¹ <http://www.dol.gov/odep/topics/IntegratedEmployment.htm>

² “Plan for the Transfer of Extended Employment Services from the Department of Human Services to the Department of Labor and Workforce Development,” by Commissioner Velez and Commissioner Wirths, page 3, April 22, 2014.

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presented by DHS for phasing-out funding for extended employment services under the Division of Developmental Disabilities was to be compliant with the national movement, both federal and private, toward an “Employment First” philosophy and improving employment outcomes for individuals with disabilities.³ For example, a report by the Institute for Community Inclusion indicated that only 14 percent of individuals served by the Division of Developmental Disabilities were served in integrated community employment services, below the national average of 20 percent.⁴ The DHS believed the success demonstrated by other states with community integrated employment presented an opportunity for New Jersey to reduce its reliance on extended employment programs.

As part of the movement by DHS towards supporting the Governor’s initiative for New Jersey to be an “Employment First” state, DHS established the Supports Program. The Supports Program is a Medicaid Community Care Waiver program through which individuals with disabilities, who live in a non-licensed setting, can access Division of Developmental Disabilities’ funded services.⁵ The Medicaid Community Care Waiver is a program for individuals with disabilities that pays for the services and supports individuals with disabilities need in order to live in the community. The federal government allowed states to create waivers, including the Medicaid Community Care Waiver, as a way to help individuals with disabilities avoid institutionalization and integrate into a community setting. Additionally, all individuals receiving services by the Division of Developmental Disabilities are now required to be Medicaid eligible.⁶

In 2011, the federal Centers for Medicare and Medicaid Services issued guidance stating that Medicaid waiver funding may not be used for vocational services delivered in an extended employment setting.⁷ As part of Commissioner Velez’s testimony in 2013 before the Assembly Budget Committee,⁸ the commissioner detailed rule changes by the Division of Developmental Disabilities that were applicable to individuals serviced by the Division of Developmental Disabilities, including those in extended employment settings. Going forward, individuals receiving services from the Division of Developmental Disabilities would be required to be enrolled in Medicaid. Commissioner Velez stated that most of the Division of Developmental Disabilities’ services were previously provided with State-only funds and these changes were necessary for the State to receive a federal match for each State dollar appropriated for the Division of Developmental Disabilities’ services.

The requirement for individuals who receive services from the Division of Developmental Disabilities to be enrolled in Medicaid created a compliance issue between extended employment programs and the Medicaid mandate issued in 2011. As a result,

³ “Upcoming Changes to DDD’s Policy on Funding of Sheltered Workshops,” March 2013, Department of Human Services.

⁴ http://www.statedata.info/statedatabook/img/statedata2011_Fweb.pdf

⁵ <http://www.state.nj.us/humanservices/ddd/programs/supportsprgm.html>

⁶ “Plan for the Transfer of Extended Employment Services from the Department of Human Services to the Department of Labor and Workforce Development,” by Commissioner Velez and Commissioner Wirths, April 22, 2014.

⁷ Ibid.

⁸ Assembly Budget Committee, Department of Human Services, April 16, 2013 at 10:00 a.m., Testimony by Commissioner Jennifer Velez.

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individuals with disabilities under DHS were no longer eligible to receive services in an extended employment setting because DHS, in an effort to receive a maximized federal Medicaid reimbursement for the Community Care Waiver Supports Program, was prohibited from spending federal funds on vocational rehabilitation services in an extended employment setting.

In addition to the requirements set forth by the Centers for Medicare and Medicaid Services, DHS would have also faced a potential conflict with the U.S. Department of Justice. The U.S. Department of Justice, at the time when DHS released its policy on funding extended employment services, had stated its belief that the *Olmstead* decision applies to employment and that placement in extended employment settings may be a violation of *Olmstead*.⁹ The U.S. Department of Justice Civil Rights Division had also become increasingly vocal regarding the obligation of states to support individuals with disabilities to succeed in community-integrated employment and had taken some form of action against at least four states for violating *Olmstead*.¹⁰

On May 1, 2013, Commissioner Velez also testified at the Senate Budget Hearing that DHS was exploring other options to address concerns, expressed by the Legislature, regarding the elimination of funding of extended employment services. At the time, DHS had approximately \$6.9 million in contracts with providers of extended employment programs, serving about 700 individuals.¹¹ The vast majority of the extended employment providers who held contracts with the Division of Developmental Disabilities also held these contracts with the Division of Vocational Rehabilitation Services, allowing for the possibility of a transfer of programs and clients from the Division of Developmental Disabilities to the Division of Vocational Rehabilitation Services.¹² On May 21, 2013, Assembly Resolution 146 was passed by the General Assembly of New Jersey and filed with the Secretary of State urging Commissioner Velez to reconsider phasing out funding for extended employment services. After discussions with the Legislature, a decision was made to transition extended employment services and related ancillary services from DHS to DLWD. The transitional agreement was included in the FY 2014 Appropriation Act (P.L.2013, c.77):

“By January 1, 2013, the Commissioner of Human Services and the Commissioner of Labor and Workforce Development shall jointly develop, and submit for the review and approval of the Joint Budget Oversight Committee, a plan for the transition of such extended employment services and related ancillary services to the Department of Labor and Workforce Development, which plan shall ensure the continued availability of such services to current and future clients who choose to avail themselves of such services at the same level of services and under the same client eligibility and cost requirements; and, except in accordance with the plan jointly developed by the Commissioner of Human Services and the Commissioner of Labor and Workforce Development and approved by the Joint Budget Oversight Committee, such services,

⁹ “Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*,” http://www.ada.gov/olmstead/q&a_olmstead.htm

¹⁰ *Ibid.*

¹¹ Department of Human Services follow up questions to Senate Budget and Appropriations Committee (FY 2014).

¹² *Ibid.*

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and the funds allocated for those services, shall not be transferred to any other department.”

The final plan, jointly developed by Commissioner Velez and Commissioner Wirths was submitted on April 22, 2014 to the Joint Budget Oversight Committee. A total of \$5.54 million in funds was identified to be transferred from the Division of Developmental Disabilities to the Division of Vocational Rehabilitation Services for extended employment services and for transportation for the subset of individuals currently served by extended employment programs by the Division of Developmental Disabilities and receiving transportation. The transfer would transition 710 individuals from DHS to DLWD, which would increase the total number of individuals with disabilities receiving extended employment services under the Division of Vocational Rehabilitation Services to 3,378. To allow for the transfer of the 710 individuals, DLWD waived its regulations to ensure that 21 percent of all extended employment participants would not be required to meet the 20 percent production rate requirement.¹³

The FY 2015 Appropriation Act included a \$5.54 million transfer of Grants-in-Aid from the Division of Developmental Disabilities to the Division of Vocational Rehabilitation Services.

Federal History and the Americans with Disabilities Act and the Rehabilitation Act of 1973

Historically, society has tended to isolate and segregate individuals with disabilities. In 1990, the U.S. Congress responded to the discriminating behavior of society towards individuals with disabilities by enacting the “Americans with Disabilities Act” (42 U.S.C. 12101 et seq.). The act was to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”¹⁴ Additionally, under “Americans with Disabilities Act,” “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”¹⁵

Pursuant to the “Americans with Disabilities Act,” the U.S. Attorney General issued regulations implementing Title II, which are based on regulations issued pursuant to section 504 of the “Rehabilitation Act of 1973.”¹⁶ The Title II regulations require public entities to administer services, programs, and activities, for individuals with disabilities, in the most integrated setting appropriate. The Rehabilitation Act of 1973 was amended pursuant to the “Workforce Investment Act of 1998.”¹⁷ Under Title IV of the “Workforce Investment Act,” DLWD receives federal funds for the Division of Vocational Rehabilitation Services, which at the time of the transfer in 2014 equaled \$54 million, matched by State funds of \$13 million.

¹³ Under regulation (N.J.A.C.12:51-8), the Division of Vocational Rehabilitation programs require individuals with disabilities to meet a production rate of at least 20 percent of the normal production level of an individual without a disability. Individuals not capable of meeting the 20 percent production threshold are referred to the Division of Developmental Disabilities for services under DHS.

¹⁴ 42 U.S.C. § 12101 (b)(1).

¹⁵ 42 U.S.C. § 12132.

¹⁶ 29 U.S.C. § 794(a).

¹⁷ 29 U.S.C. § 2801, et seq.

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The Olmstead Decision

Additionally, court cases, notably *Olmstead*, have interpreted the “Americans with Disabilities Act” to provide for certain expanded rights of individuals with disabilities. *Olmstead* originated with Lois Curtis and Elaine Wilson, two women with disabilities, who were voluntarily admitted to the psychiatric unit in the State-run Georgia Regional Hospital where they received treatment. After receiving treatment, mental health professionals stated that both Lois and Elaine were ready to move to a community-based program. Despite the statements of the mental health professionals, both women remained confined in the institution for several years after the initial treatment. Lois and Elaine filed a lawsuit against Tommy Olmstead, then Commissioner of Georgia’s Department of Human Resources, claiming that their confinement in an institution violated their rights as persons with disabilities pursuant to the “Americans with Disabilities Act” for release from the hospital.¹⁸

In *Olmstead*, the U.S. Supreme Court held that Title II, under the “Americans with Disabilities Act,” prohibits the unjustified segregation of individuals with disabilities. Additionally, the Supreme Court held that public entities are required to provide community-based services to persons with disabilities when (1) such services are appropriate; (2) the affected persons do not oppose community-based treatment; and (3) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity.¹⁹ The Supreme Court explained that this holding reflected two evident judgments. First, placing an individual with disabilities in an institution, who can otherwise handle and benefit from community settings, perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. Second, institutional confinement severely diminishes the everyday life activities of individuals, including relationships, contacts, independence, education advancement and cultural enrichment.²⁰

To comply with the “Americans with Disabilities Act’s” integration mandate, public entities are required to modify their policies and practices to avoid discrimination. In the years since the passage of the “Americans with Disabilities Act” and the Supreme Court’s decision in *Olmstead*, the “Americans with Disabilities Act’s” integration mandate has applied in a wide variety of contexts. The Civil Rights Division in the U.S. Department of Justice has stated that the goal of the integration mandate has yet to be fully realized.²¹ Some state and local governments have started to provide more community-based programs to individuals with disabilities; however, the U.S. Department of Justice has stated that many people who could and want to live, work, and receive services in integrated settings are still waiting for *Olmstead* to be fulfilled.²²

Summary

¹⁸ “*Olmstead*: Community Integration for Everyone,” http://www.ada.gov/olmstead/olmstead_about.htm

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ “Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*,” http://www.ada.gov/olmstead/q&a_olmstead.htm

²² *Ibid.*

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Through numerous federal changes, including Medicaid mandates, *Olmstead*, the enactment of the “Workforce Innovation and Opportunity Act,” and the State’s designation as an “Employment First” state, DHS was no longer able to sustain the extended employment services it provided through its Division of Developmental Disabilities. This transfer of extended employment services from DHS to DLWD is one example of the changing landscape of employment opportunities for persons with disabilities. Through numerous federal changes, including Medicaid mandates, *Olmstead*, the enactment of the “Workforce Innovation and Opportunity Act,” and the State’s designation as an “Employment First” state, which focuses on employment for people with intellectual and developmental disabilities in community-integrated employment settings, New Jersey and the rest of the nation are moving from extended employment programs to a more competitive employment environment. The challenge for the State, individuals with disabilities, and providers of these services is to balance the needs and restrictions of all the stakeholders in this evolving landscape.

As of this writing, the State continues to shift the direction of services provided to individuals with disabilities, prioritizing community-integrated employment, or “Employment First” activities, over extended employment services. Looking forward, individuals with disabilities and providers may encounter more issues as departments begin to comply with federal regulations and standards established to provide an alternative to institutionalization for individuals with disabilities.

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