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HOUSE BILL 31

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2011**

INTRODUCED BY

David L. Doyle

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; REQUIRING UNEMPLOYMENT CONTRIBUTIONS TO REMAIN AT THE CONTRIBUTION SCHEDULE 1 RATE THROUGH CALENDAR YEAR 2013; PROVIDING PER DIEM AND MILEAGE FOR STATE UNEMPLOYMENT COMPENSATION ADVISORY COUNCIL MEMBERS; DIRECTING THE STATE UNEMPLOYMENT COMPENSATION ADVISORY COUNCIL TO MAKE RECOMMENDATIONS TO THE LEGISLATURE; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 51-1-11 NMSA 1978 (being Laws 2003, Chapter 47, Section 11, as amended) is amended to read:

"51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

A. The division shall maintain a separate account for each contributing employer and shall credit the contributing employer's account with all contributions paid by .187414.1

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1 that employer under the Unemployment Compensation Law. Nothing  
2 in the Unemployment Compensation Law shall be construed to  
3 grant an employer or individuals in the employer's service  
4 prior claims or rights to the amounts paid by the employer into  
5 the fund.

6 B. Benefits paid to an individual shall be charged  
7 against the accounts of the individual's base-period employers  
8 on a pro rata basis according to the proportion of the  
9 individual's total base-period wages received from each  
10 employer, except that no benefits paid to a claimant as  
11 extended benefits under the provisions of Section 51-1-48 NMSA  
12 1978 shall be charged to the account of any base-period  
13 employer who is not on a reimbursable basis and who is not a  
14 governmental entity and, except as the secretary shall by rule  
15 prescribe otherwise, in the case of benefits paid to an  
16 individual who:

17 (1) left the employ of a base-period employer  
18 who is not on a reimbursable basis voluntarily without good  
19 cause in connection with the individual's employment;

20 (2) was discharged from the employment of a  
21 base-period employer who is not on a reimbursable basis for  
22 misconduct connected with the individual's employment;

23 (3) is employed part time by a base-period  
24 employer who is not on a reimbursable basis and who continues  
25 to furnish the individual the same part-time work while the

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1 individual is separated from full-time work for a  
2 nondisqualifying reason; or

3 (4) received benefits based upon wages earned  
4 from a base-period employer who is not on a reimbursable basis  
5 while attending approved training under the provisions of  
6 Subsection E of Section 51-1-5 NMSA 1978.

7 C. The division shall not charge a contributing or  
8 reimbursing base-period employer's account with any portion of  
9 benefit amounts that the division can bill to or recover from  
10 the federal government as either regular or extended benefits.

11 D. The division shall not charge a contributing  
12 base-period employer's account with any portion of benefits  
13 paid to an individual for dependent allowance or because the  
14 individual to whom benefits are paid:

15 (1) separated from employment due to domestic  
16 abuse, as "domestic abuse" is defined in Section 40-13-2 NMSA  
17 1978; or

18 (2) voluntarily left work to relocate because  
19 of a spouse who is in the military service of the United States  
20 or the New Mexico national guard, receiving permanent change of  
21 station orders, activation orders or unit deployment orders.

22 E. All contributions to the fund shall be pooled  
23 and available to pay benefits to any individual entitled  
24 thereto, irrespective of the source of the contributions.

25 F. For each calendar year, if, as of the

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1 computation date for that year, an employer's account has been  
2 chargeable with benefits throughout the preceding thirty-six  
3 months, the secretary shall classify the employer in accordance  
4 with its actual experience of benefits charged against its  
5 accounts. For such an employer, the contribution rate shall be  
6 determined pursuant to Subsection I of this section on the  
7 basis of the employer's record and the condition of the fund as  
8 of the computation date for the calendar year. If, as of the  
9 computation date for a calendar year, an employer's account has  
10 not been chargeable with benefits throughout the preceding  
11 thirty-six months, the contribution rate for that employer for  
12 the calendar year shall be two percent, except that:

13 (1) an individual, type of organization or  
14 employing unit that acquires all or part of the trade or  
15 business of another employing unit, pursuant to Paragraphs (2)  
16 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has  
17 a rate of contribution less than two percent shall be entitled  
18 to the transfer of the reduced rate to the extent permitted  
19 under Subsection H of this section;

20 (2) an employer that, at the time of  
21 establishing an account, is in business in another state or  
22 states and that is not currently doing business in New Mexico  
23 may elect, pursuant to Paragraph (3) of this subsection, to  
24 receive a beginning contribution rate of two percent or a  
25 contribution rate based on the current contribution rate

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1 schedule in Paragraph (4) of Subsection I of this section,  
2 whichever is lower, if:

3 (a) the employer has been in operation  
4 in the other state or states for at least three years  
5 immediately preceding the date of becoming a liable employer in  
6 New Mexico, throughout which an individual in the employer's  
7 employ could have received benefits if eligible; and

8 (b) the employer provides the  
9 authenticated account history as defined by rule of the  
10 secretary from information accumulated from operations in the  
11 other state or all the other states to compute a current New  
12 Mexico rate; and

13 (3) the election authorized in Paragraph (2)  
14 of this subsection shall be made in writing within thirty days  
15 after receiving notice of New Mexico liability and, if not made  
16 timely, a two percent rate will be assigned; if the election is  
17 made timely, the employer's account will receive the lesser of  
18 the computed rate determined by the condition of the account  
19 for the computation date immediately preceding the New Mexico  
20 liable date, or two percent; rates for subsequent years will be  
21 determined by the condition of the account for the computation  
22 date.

23 G. An employer may make voluntary payments in  
24 addition to the contributions required under the Unemployment  
25 Compensation Law, which shall be credited to the employer's

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1 account in accordance with department rule. The voluntary  
2 payments shall be included in the employer's account as of the  
3 employer's most recent computation date if they are made on or  
4 before the following March 1. Voluntary payments when accepted  
5 from an employer shall not be refunded in whole or in part.

6 H. In the case of a transfer of an employing  
7 enterprise, notwithstanding any other provision of law, the  
8 experience history of the transferred enterprise shall be  
9 transferred from the predecessor employer to the successor  
10 under the following conditions and in accordance with the  
11 applicable rules of the secretary:

12 (1) as used in this subsection:

13 (a) "employing enterprise" means a  
14 business activity engaged in by a contributing employing unit  
15 in which one or more persons have been employed within the  
16 current or the three preceding calendar quarters. An  
17 "employing enterprise" includes the employer's work force;

18 (b) "predecessor" means the owner and  
19 operator of an employing enterprise immediately prior to the  
20 transfer of such enterprise;

21 (c) "successor" means any person that  
22 acquires an employing enterprise and continues to operate such  
23 business entity;

24 (d) "experience history" means the  
25 experience rating record and reserve account, including the

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1 actual contributions, benefit charges and payroll experience of  
2 the employing enterprise;

3 (e) "common ownership" means that two or  
4 more businesses are substantially owned, managed or controlled  
5 by the same person or persons;

6 (f) "knowingly" means having actual  
7 knowledge of or acting with deliberate ignorance of or reckless  
8 disregard for the prohibition involved; and

9 (g) "violates or attempts to violate"  
10 includes an intent to evade, a misrepresentation or a willful  
11 nondisclosure;

12 (2) except as otherwise provided in this  
13 subsection, for the purpose of this subsection, two or more  
14 employers who are parties to or the subject of any transaction  
15 involving the transfer of an employing enterprise shall be  
16 deemed to be a single employer and the experience history of  
17 the employing enterprise shall be transferred to the successor  
18 employer if the successor employer has acquired by the  
19 transaction all of the business enterprises of the predecessor;  
20 provided that:

21 (a) all contributions, interest and  
22 penalties due from the predecessor employer have been paid;

23 (b) notice of the transfer has been  
24 given in accordance with the rules of the secretary during the  
25 calendar year of the transaction transferring the employing

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1 enterprise or the date of the actual transfer of control and  
2 operation of the employing enterprise;

3 (c) the successor shall notify the  
4 division of the acquisition on or before the due date of the  
5 successor's first wage and contribution report. If the  
6 successor employer fails to notify the division of the  
7 acquisition within this time limit, the division, when it  
8 receives actual notice, shall effect the transfer of the  
9 experience history and applicable rate of contribution  
10 retroactively to the date of the acquisition, and the successor  
11 shall pay a penalty of fifty dollars (\$50.00); and

12 (d) where the transaction involves only  
13 a merger, consolidation or other form of reorganization without  
14 a substantial change in the ownership and controlling interest  
15 of the business entity, as determined by the secretary, the  
16 limitations on transfers stated in Subparagraphs (a), (b) and  
17 (c) of this paragraph shall not apply. A party to a merger,  
18 consolidation or other form of reorganization described in this  
19 subparagraph shall not be relieved of liability for any  
20 contributions, interest or penalties due and owing from the  
21 employing enterprise at the time of the merger, consolidation  
22 or other form of reorganization;

23 (3) the applicable experience history may be  
24 transferred to the successor in the case of a partial transfer  
25 of an employing enterprise if the successor has acquired one or

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1 more of the several employing enterprises of a predecessor but  
2 not all of the employing enterprises of the predecessor and  
3 each employing enterprise so acquired was operated by the  
4 predecessor as a separate store, factory, shop or other  
5 separate employing enterprise and the predecessor, throughout  
6 the entire period of the contribution with liability applicable  
7 to each enterprise transferred, has maintained and preserved  
8 payroll records that, together with records of contribution  
9 liability and benefit chargeability, can be separated by the  
10 parties from the enterprises retained by the predecessor to the  
11 satisfaction of the secretary or the secretary's delegate. A  
12 partial experience history transfer will be made only if the  
13 successor:

14 (a) notifies the division of the  
15 acquisition, in writing, not later than the due date of the  
16 successor's first quarterly wage and contribution report after  
17 the effective date of the acquisition;

18 (b) files an application provided by the  
19 division that contains the endorsement of the predecessor  
20 within thirty days from the delivery or mailing of such  
21 application by the division to the successor's last known  
22 address; and

23 (c) files with the application a Form  
24 ES-903A or its equivalent with a schedule of the name and  
25 social security number of and the wages paid to and the

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1 contributions paid for each employee for the three-and-one-  
2 half-year period preceding the computation date as defined in  
3 Subparagraph (d) of Paragraph (3) of Subsection I of this  
4 section through the date of transfer or such lesser period as  
5 the enterprises transferred may have been in operation. The  
6 application and Form ES-903A shall be supported by the  
7 predecessor's permanent employment records, which shall be  
8 available for audit by the division. The application and Form  
9 ES-903A shall be reviewed by the division, and, upon approval,  
10 the percentage of the predecessor's experience history  
11 attributable to the enterprises transferred shall be  
12 transferred to the successor. The percentage shall be obtained  
13 by dividing the taxable payrolls of the transferred enterprises  
14 for such three-and-one-half-year period preceding the date of  
15 computation or such lesser period as the enterprises  
16 transferred may have been in operation by the predecessor's  
17 entire payroll;

18 (4) if, at the time of a transfer of an  
19 employing enterprise in whole or in part, both the predecessor  
20 and the successor are under common ownership, then the  
21 experience history attributable to the transferred business  
22 shall also be transferred to and combined with the experience  
23 history attributable to the successor employer. The rates of  
24 both employers shall be recalculated and made effective  
25 immediately upon the date of the transfer;

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1 (5) whenever a person, who is not currently an  
2 employer, acquires the trade or business of an employing  
3 enterprise, the experience history of the acquired business  
4 shall not be transferred to the successor if the secretary or  
5 the secretary's designee finds that the successor acquired the  
6 business solely or primarily for the purpose of obtaining a  
7 lower rate of contributions. Instead, the successor shall be  
8 assigned the applicable new employer rate pursuant to this  
9 section. In determining whether the business was acquired  
10 solely or primarily for the purpose of obtaining a lower rate  
11 of contribution, the secretary or the secretary's designee  
12 shall consider:

13 (a) the cost of acquiring the business;  
14 (b) whether the person continued the  
15 business enterprise of the acquired business;

16 (c) how long such business enterprise  
17 was continued; and

18 (d) whether a substantial number of new  
19 employees were hired for performance of duties unrelated to  
20 those that the business activity conducted prior to  
21 acquisition;

22 (6) if, following a transfer of experience  
23 history pursuant to this subsection, the department determines  
24 that a substantial purpose of the transfer of the employing  
25 enterprise was to obtain a reduced liability for contributions,

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1 then the experience rating accounts of the employers involved  
2 shall be combined into a single account and a single rate  
3 assigned to the combined account;

4 (7) the secretary shall adopt such rules as  
5 are necessary to interpret and carry out the provisions of this  
6 subsection, including rules that:

7 (a) describe how experience history is  
8 to be transferred; and

9 (b) establish procedures to identify the  
10 type of transfer or acquisition of an employing enterprise; and

11 (8) a person who knowingly violates or  
12 attempts to violate a rule adopted pursuant to Paragraph (7) of  
13 this subsection, who transfers or acquires, or attempts to  
14 transfer or acquire, an employing enterprise for the sole or  
15 primary purpose of obtaining a reduced liability for  
16 contributions or who knowingly advises another person to  
17 violate a rule adopted pursuant to Paragraph (7) of this  
18 subsection or to transfer or acquire an employing enterprise  
19 for the sole or primary purpose of obtaining a reduced  
20 liability for contributions is guilty of a misdemeanor and  
21 shall be punished by a fine of not less than one thousand five  
22 hundred dollars (\$1,500) or more than three thousand dollars  
23 (\$3,000) or, if an individual, by imprisonment for a definite  
24 term not to exceed ninety days or both. In addition, such a  
25 person shall be subject to the following civil penalty imposed

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1 by the secretary:

2 (a) if the person is an employer, the  
3 person shall be assigned the highest contribution rate  
4 established by the provisions of this section for the calendar  
5 year in which the violation occurs and the three subsequent  
6 calendar years; provided that if the difference between the  
7 increased penalty rate and the rate otherwise applicable would  
8 be less than two percent of the employer's payroll, the  
9 contribution rate shall be increased by two percent of the  
10 employer's payroll for the calendar year in which the violation  
11 occurs and the three subsequent calendar years; or

12 (b) if the person is not an employer,  
13 the secretary may impose a civil penalty not to exceed three  
14 thousand dollars (\$3,000).

15 I. For each calendar year, if, as of the  
16 computation date for that year, an employer's account has been  
17 chargeable with benefits throughout the preceding thirty-six  
18 months, the contribution rate for that employer shall be  
19 determined as follows:

20 (1) the total assets in the fund and the total  
21 of the last annual payrolls of all employers subject to  
22 contributions as of the computation date for each year shall be  
23 determined. These annual totals are here called "the fund" and  
24 "total payrolls". For each year, the "reserve" of each  
25 employer shall be fixed by the excess of the employer's total

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1 contributions over total benefit charges computed as a  
2 percentage of the employer's average payroll reported for  
3 contributions. The determination of each employer's annual  
4 rate, computed as of the computation date for each calendar  
5 year, shall be made by matching the employer's reserve as shown  
6 in the reserve column with the corresponding rate in the rate  
7 column of the applicable rate schedule of the table provided in  
8 Paragraph (4) of this subsection;

9 (2) for each calendar year after ~~[2012]~~ 2013,  
10 except as otherwise provided, each employer's rate shall be the  
11 corresponding rate in:

12 (a) Contribution Schedule 0 of the table  
13 provided in Paragraph (4) of this subsection if the fund equals  
14 at least two and three-tenths percent of the total payrolls;

15 (b) Contribution Schedule 1 of the table  
16 provided in Paragraph (4) of this subsection if the fund equals  
17 less than two and three-tenths percent but not less than one  
18 and seven-tenths percent of the total payrolls;

19 (c) Contribution Schedule 2 of the table  
20 provided in Paragraph (4) of this subsection if the fund equals  
21 less than one and seven-tenths percent but not less than one  
22 and three-tenths percent of the total payrolls;

23 (d) Contribution Schedule 3 of the table  
24 provided in Paragraph (4) of this subsection if the fund equals  
25 less than one and three-tenths percent but not less than one

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1 percent of the total payrolls;

2 (e) Contribution Schedule 4 of the table  
3 provided in Paragraph (4) of this subsection if the fund equals  
4 less than one percent but not less than seven-tenths percent of  
5 the total payrolls;

6 (f) Contribution Schedule 5 of the table  
7 provided in Paragraph (4) of this subsection if the fund equals  
8 less than seven-tenths percent but not less than three-tenths  
9 percent of the total payrolls; or

10 (g) Contribution Schedule 6 of the table  
11 provided in Paragraph (4) of this subsection if the fund equals  
12 less than three-tenths percent of the total payrolls;

13 (3) as used in this section:

14 (a) "annual payroll" means the total  
15 amount of remuneration from an employer for employment during a  
16 twelve-month period ending on a computation date, and "average  
17 payroll" means the average of the last three annual payrolls;

18 (b) "base-period wages" means the wages  
19 of an individual for insured work during the individual's base  
20 period on the basis of which the individual's benefit rights  
21 were determined;

22 (c) "base-period employers" means the  
23 employers of an individual during the individual's base period;  
24 and

25 (d) "computation date" for each

1 calendar year means the close of business on June 30 of the  
 2 preceding calendar year;

3 (4) table of employer reserves and  
 4 contribution rate schedules:

5 Employer	Contribution	Contribution	Contribution	Contribution
6 Reserve	Schedule 0	Schedule 1	Schedule 2	Schedule 3
7 10.0% and over	0.03%	0.05%	0.1%	0.6%
8 9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
9 8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
10 7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
11 6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
12 5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
13 4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
14 3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
15 2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
16 1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
17 0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
18 (-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
19 (-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
20 (-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
21 Under (-2.0%)	5.40%	5.4%	5.4%	5.4%
22 Employer	Contribution	Contribution	Contribution	
23 Reserve	Schedule 4	Schedule 5	Schedule 6	
24 10.0% and over	0.9%	1.2%	2.7%	
25 9.0%-9.9%	1.2%	1.5%	2.7%	

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1	8.0%-8.9%	1.5%	1.8%	2.7%
2	7.0%-7.9%	1.8%	2.1%	2.7%
3	6.0%-6.9%	2.1%	2.4%	2.7%
4	5.0%-5.9%	2.4%	2.7%	3.0%
5	4.0%-4.9%	2.7%	3.0%	3.3%
6	3.0%-3.9%	3.0%	3.3%	3.6%
7	2.0%-2.9%	3.3%	3.6%	3.9%
8	1.0%-1.9%	3.6%	3.9%	4.2%
9	0.9%-0.0%	3.9%	4.2%	4.5%
10	(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
11	(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
12	(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
13	Under (-2.0%)	5.4%	5.4%	5.4%;

14 and

15 (5) from January 1, 2011 through December 31,  
16 [~~2011~~] 2013, each employer making contributions pursuant to  
17 this subsection shall make a contribution at the rate  
18 specified in Contribution Schedule 1.

19 J. The division shall promptly notify each  
20 employer of the employer's rate of contributions as determined  
21 for any calendar year pursuant to this section. Such  
22 notification shall include the amount determined as the  
23 employer's average payroll, the total of all of the employer's  
24 contributions paid on the employer's behalf and credited to  
25 the employer's account for all past years and total benefits

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1 charged to the employer's account for all such years. Such  
2 determination shall become conclusive and binding upon the  
3 employer unless, within thirty days after the mailing of  
4 notice thereof to the employer's last known address or in the  
5 absence of mailing, within thirty days after the delivery of  
6 such notice, the employer files an application for review and  
7 redetermination, setting forth the employer's reason therefor.  
8 The employer shall be granted an opportunity for a fair  
9 hearing in accordance with rules prescribed by the secretary,  
10 but an employer shall not have standing, in any proceeding  
11 involving the employer's rate of contributions or contribution  
12 liability, to contest the chargeability to the employer's  
13 account of any benefits paid in accordance with a  
14 determination, redetermination or decision pursuant to Section  
15 51-1-8 NMSA 1978, except upon the ground that the services on  
16 the basis of which such benefits were found to be chargeable  
17 did not constitute services performed in employment for the  
18 employer and only in the event that the employer was not a  
19 party to such determination, redetermination or decision, or  
20 to any other proceedings under the Unemployment Compensation  
21 Law in which the character of such services was determined.  
22 The employer shall be promptly notified of the decision on the  
23 employer's application for redetermination, which shall become  
24 final unless, within fifteen days after the mailing of notice  
25 thereof to the employer's last known address or in the absence

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1 of mailing, within fifteen days after the delivery of such  
2 notice, further appeal is initiated pursuant to Subsection D  
3 of Section 51-1-8 NMSA 1978.

4 K. The division shall provide each contributing  
5 employer, within ninety days of the end of each calendar  
6 quarter, a written determination of benefits chargeable to the  
7 employer's account. Such determination shall become  
8 conclusive and binding upon the employer for all purposes  
9 unless, within thirty days after the mailing of the  
10 determination to the employer's last known address or in the  
11 absence of mailing, within thirty days after the delivery of  
12 such determination, the employer files an application for  
13 review and redetermination, setting forth the employer's  
14 reason therefor. The employer shall be granted an opportunity  
15 for a fair hearing in accordance with rules prescribed by the  
16 secretary, but an employer shall not have standing in any  
17 proceeding involving the employer's contribution liability to  
18 contest the chargeability to the employer's account of any  
19 benefits paid in accordance with a determination,  
20 redetermination or decision pursuant to Section 51-1-8 NMSA  
21 1978, except upon the ground that the services on the basis of  
22 which such benefits were found to be chargeable did not  
23 constitute services performed in employment for the employer  
24 and only in the event that the employer was not a party to  
25 such determination, redetermination or decision, or to any

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1 other proceedings under the Unemployment Compensation Law in  
2 which the character of such services was determined. The  
3 employer shall be promptly notified of the decision on the  
4 employer's application for redetermination, which shall become  
5 final unless, within fifteen days after the mailing of notice  
6 thereof to the employer's last known address or in the absence  
7 of mailing, within fifteen days after the delivery of such  
8 notice, further appeal is initiated pursuant to Subsection D  
9 of Section 51-1-8 NMSA 1978.

10 L. The contributions, together with interest and  
11 penalties thereon imposed by the Unemployment Compensation  
12 Law, shall not be assessed nor shall action to collect the  
13 same be commenced more than four years after a report showing  
14 the amount of the contributions was due. In the case of a  
15 false or fraudulent contribution report with intent to evade  
16 contributions or a willful failure to file a report of all  
17 contributions due, the contributions, together with interest  
18 and penalties thereon, may be assessed or an action to collect  
19 such contributions may be begun at any time. Before the  
20 expiration of such period of limitation, the employer and the  
21 secretary may agree in writing to an extension thereof and the  
22 period so agreed on may be extended by subsequent agreements  
23 in writing. In any case where the assessment has been made  
24 and action to collect has been commenced within four years of  
25 the due date of any contribution, interest or penalty,

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1 including the filing of a warrant of lien by the secretary  
2 pursuant to Section 51-1-36 NMSA 1978, such action shall not  
3 be subject to any period of limitation.

4 M. The secretary shall correct any error in the  
5 determination of an employer's rate of contribution during the  
6 calendar year to which the erroneous rate applies,  
7 notwithstanding that notification of the employer's rate of  
8 contribution may have been issued and contributions paid  
9 pursuant to the notification. Upon issuance by the division  
10 of a corrected rate of contribution, the employer shall have  
11 the same rights to review and redetermination as provided in  
12 Subsection J of this section.

13 N. Any interest required to be paid on advances to  
14 this state's unemployment compensation fund under Title 12 of  
15 the Social Security Act shall be paid in a timely manner as  
16 required under Section 1202 of Title 12 of the Social Security  
17 Act and shall not be paid, directly or indirectly, by the  
18 state from amounts in the state's unemployment compensation  
19 fund."

20 SECTION 2. Section 51-1-25 NMSA 1978 (being Laws 1959,  
21 Chapter 321, Section 5, as amended) is amended to read:

22 "51-1-25. ADVISORY COUNCILS.--

23 A. The secretary shall appoint a "state  
24 unemployment compensation advisory council" composed [~~in each~~  
25 ~~case of men and women and including~~] of an equal number of

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underscored material = new  
[bracketed material] = delete

1 employer and employee representatives who are representative  
2 because of their vocation, employment or affiliations and such  
3 members representing the general public as the secretary  
4 designates. The council shall aid the department in  
5 formulating policies and discussing problems relating to the  
6 administration of the Unemployment Compensation Law and in  
7 assuring impartiality and freedom from political influence in  
8 the solution of such problems. The secretary may also appoint  
9 industry or other special councils to perform appropriate  
10 services. ~~[Council members shall serve without compensation  
11 other than for wage loss sustained for attendance at formal  
12 meetings of the council or duly constituted committees.  
13 Members shall be reimbursed for any travel expense incurred in  
14 the same manner as employees of the department.]~~ State  
15 unemployment compensation advisory council members shall  
16 receive per diem and mileage as provided for nonsalaried  
17 public officers in the Per Diem and Mileage Act and shall  
18 receive no other compensation, perquisite or allowance.

19 B. On or before November 1, 2012, the state  
20 unemployment compensation advisory council shall present  
21 recommendations to the legislature for statutory changes to  
22 provide for a permanent solution for the solvency of the  
23 unemployment compensation fund. In preparing the  
24 recommendations, the council shall consider the following  
25 objectives:

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1                   (1) refining the formula for determining  
2 contribution rate schedules that determine an employer's  
3 contribution to the unemployment compensation fund each  
4 calendar year;

5                   (2) reevaluating and restructuring the  
6 contribution rate schedules and the employer experience rating  
7 banding within each contribution rate schedule;

8                   (3) adding a ceiling and floor mechanism that  
9 adjusts if the unemployment compensation fund reaches a high  
10 balance or is near insolvency; and

11                   (4) determining a target unemployment  
12 compensation fund balance or ratio."

13                   SECTION 3. APPROPRIATION.--

14                   A. Sixty-five million dollars (\$65,000,000) is  
15 appropriated from the general fund to the unemployment  
16 compensation fund for expenditure in fiscal year 2012 and  
17 subsequent fiscal years to maintain an adequate reserve in the  
18 unemployment compensation fund. Any unexpended or  
19 unencumbered balance remaining at the end of a fiscal year  
20 shall not revert to the general fund.

21                   B. Sixty-five million dollars (\$65,000,000) is  
22 appropriated from the general fund to the unemployment  
23 compensation fund for expenditure in fiscal year 2013 and  
24 subsequent fiscal years to maintain an adequate reserve in the  
25 unemployment compensation fund. Any unexpended or

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underscoring material = new  
~~[bracketed material] = delete~~

1 unencumbered balance remaining at the end of a fiscal year  
2 shall not revert to the general fund.

3 SECTION 4. EFFECTIVE DATE.--The effective date of the  
4 provisions of this act is January 1, 2012.

5 SECTION 5. EMERGENCY.--It is necessary for the public  
6 peace, health and safety that this act take effect  
7 immediately.

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