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FISCAL IMPACT REPORT

ORIGINAL DATE 2/11/09

SPONSOR Giannini LAST UPDATED _____ HB 637

SHORT TITLE No Electronic Unemployment Benefit Card Fees SB _____

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)
 Department of Finance and Administration (DFA)
 Workers' Compensation Administration (WCA)

SUMMARY

Synopsis of Bill

House Bill 637 adds a new section to the Unemployment Compensation Law. The new section states that a person shall not charge any fee to an individual who receives unemployment compensation either for use of an electronic benefit transfer card or to make a balance inquiry, as "balance inquiry" is defined in the Remote Financial Service Unit Act. The proposed legislation has an emergency clause that the act take effect immediately.

FISCAL IMPLICATIONS

WSD noted that like other government agencies that issue benefits to recipients, the department initiated the use of debit cards for ease of the unemployment insurance benefit recipients and cost savings to the department. WSD has forwarded the proposed legislation to Bank of America and awaits its response on how the proposed legislation would affect their ability to continue under the current fiscal agreement between the state of New Mexico and Bank of America. . The current agreement is in place until April 2010.

SIGNIFICANT ISSUES

WSD reported it has negotiated a contract with the Bank of America to provide the debit services. Part of this contract included a fee schedule. This fee schedule sets out what fees can be charged for the use of the card. The fee schedule sets out that no fees can be charged for:

- Unlimited ATM balance inquiries anywhere;
- Unlimited purchases made at a visa merchant on either a signature or PIN basis;
- One ATM cash withdrawal at any Bank of America ATM per week; and
- One cash withdrawal from any Visa bank per week.

The benefit recipients are given this fee schedule in writing when their cards arrive. This fee schedule allows all recipients “no fee” access to their entire balance on a weekly basis by either visiting a Band of America ATM or any bank lobby. The Department has a direct deposit pilot program in place for receipt of unemployment insurance benefits. Assuming a successful pilot program the plan is to allow recipients the choice of direct deposit or debit card for receipts of benefits.

Pursuant to Section 6-10-35 NMSA 1978, the State Board of Finance designates a bank to be the state's fiscal agent. The Board of Finance procures this contract through a request for proposals process and the contractor is paid either through credits earned on state balances or through a special appropriation to Department of Finance and Administration the event the cost of services provided exceeds credits earned on state balances.

DFA reported that Bank of America currently is designated as the state's fiscal agent (that contract expires in April 2010). The Board of Finance's fiscal agent agreement with Bank of America provides a negotiated schedule of fees that Bank of America assesses for the use of prepaid debit cards issued by the Workforce Solutions Department to individuals receiving unemployment insurance benefits. This fee schedule is provided to cardholders in writing when their card arrives in the mail. Pursuant to that schedule of fees, cardholders pay no fee for balance inquiries at ATMs. Cardholders receive one free domestic ATM withdrawal per week and pay \$1.50 for additional ATM withdrawals. Cardholders also receive one free cash access at any Visa member bank per week, with additional cash access transactions costing \$10. There is no fee for using the debit card at a retail point of sale, which for example would include using the card at a grocery store or retailer.

The Board of Finance has concerns about prohibiting the state's fiscal agent bank from charging fees for the use of prepaid debit cards for unemployment insurance benefits. The fees negotiated with Bank of America reflect the unit cost to the bank to provide the services, based on the volume of transactions Workforce Solutions Department anticipates will occur. If the bank is prohibited from charging fees for these services, one of three outcomes is possible. 1) The bank may agree to provide the services at no cost (and the fiscal agent contract will be amended to reflect that no fees will be charged). 2) The bank may not agree to provide the services at no cost, and then state will no longer be able to offer prepaid debit cards as a method of receiving unemployment insurance benefits. 3) The bank may not agree to provide the services at no cost, and then the state could pay the cost of the services itself out of credits earned on the state's balances or from Department of Finance and Administration's special appropriation for fiscal agent fees.

DFA reported the second option would move the state back to issuing warrants to benefit recipients. This would be a move backward from electronic banking. Electronic funds transfers are preferred to warrants because costs of transferring the funds are lower, opportunities for fraud are reduced, the recipient receives the funds more quickly than checks received in the mail, the recipient doesn't need to wait in line to cash the check or pay a check cashing fee, and because the money can be accessed via ATMs or via point of sale transaction.

ADMINISTRATIVE IMPLICATIONS

WSD reported the fiscal agreement between the State of New Mexico and Bank of America expires in April 2010. If passed the proposed legislation may deter a banking institution from entering into an agreement to administer the debit card option for any state agency beyond unemployment.

DFA noted adding this fee prohibition into statute will limit the Board of Finance's ability to negotiate the state's fiscal agent contract slightly.

TECHNICAL ISSUES

The proposed legislation states that no fees can be charged for the use of an electronic benefit transfer card for an individual that receives unemployment benefits. DFA and WSD reported this language could be read to disallow fees on all debit cards an unemployment insurance recipient has, not just the State-Issued unemployment insurance benefit card. The language could also be read to disallow fees charged by any financial institution, not just by the state's fiscal agent bank.

The proposed legislation carries an emergency clause, which would make it effective immediately upon receiving the governor's signature. DFA noted that before the bill could be implemented, the Board of Finance would need to approve an amendment to the fiscal agent contract that eliminates fees assessed for those services. The Board would most likely be able to approve such an amendment at its May 2009 meeting. The bill should be amended to become effective on May 30, 2009, or some later date.

DFA and WSD noted the word "person" as used in the bill is not defined, leaving it unclear whether the fee prohibition will apply to individuals, banks, businesses, partnerships, or third-party ATM owners.

OTHER SUBSTANTIVE ISSUES

DFA reported a human error made by Bank of America resulted in 42 Unemployment Insurance recipients being charged fees for balance inquiries and other services from October 2008 until January 2009. To correct the error, Bank of America reversed all fees charged to all recipients by crediting debit cards in a total amount of \$4,400. Since the error was found at the end of January 2009, Bank of America reports it has been charging cardholders pursuant to the fees contained in the fiscal agent contract.

DFA noted in an unrelated error, Workforce Solution Department failed to send a batch file to Bank of America to initiate benefit distributions on one occasion in early February 2009. As a result, some recipients received their benefits one day late. Workforce Solutions Department reports that it is working to make sure that error does not occur again.