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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/11

SPONSOR Beffort LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Unemployment Compensation Benefit Calculation SB 251

ANALYST Archuleta

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	*Indeterminate/ See Fiscal Impact	*Indeterminate/ See Fiscal Impact	*Indeterminate/ See Fiscal Impact			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 General Services Department (GSD)  
 Energy, Minerals and Natural Resources (EMNRD)  
 Department of Workforce Solutions (DWS)  
 New Mexico Municipal League (NMML)

### SUMMARY

#### Synopsis of Bill

Senate Bill 251 proposes legislation relating to the calculation of weekly unemployment insurance (UI) benefit amounts paid to certain types of UI claimants. Currently, Section 51-1-5(B) NMSA 1978 calculates an individual's weekly benefit amount as 53.5% of the average weekly wage for insured work paid in the quarter of the individual's base period in which total wages were highest. SB 251 adds a provision that excludes from the base period calculation wages paid to the individual by a governmental agency if the individual: 1) voluntarily left the employ of the governmental agency without good cause; and 2) is receiving a retirement from the public employees retirement association (PERA) or the educational retirement board (ERB) based in whole or in part on the employment with the governmental entity during the base period.

Section I of the proposed legislation includes new provisions relating to a "temporary legislative session employee," defined as an individual employed by the New Mexico legislative branch but

who has not been so employed for more than six consecutive months of the previous twelve months or nine of the previous twelve months. The bill provides that such temporary legislative session employees are ineligible for unemployment insurance benefits during a period between two regular sessions of the legislature unless the individual established that he/she is available for and making an active search for permanent full-time work. If the individual has been employed by the New Mexico legislative branch during two successive regular sessions, he/she is presumed to be unavailable for permanent new work during a period after the second successive regular session and therefore not eligible for regular benefits.

The proposed legislation adds to Section 51-1-11 NMSA 1978 a provision that no benefits paid to an individual be charged to the account of a base-period employer that is a governmental entity, if the individual voluntarily left without good cause and is receiving a retirement pension from PERA or ERB based in whole or in part on employment with the governmental entity during the base period.

Senate Bill 251 was endorsed by the Legislative Finance Committee (LFC).

### **FISCAL IMPLICATIONS**

DWS indicates that the bill would require the development and implementation of code changes within both the UI claims and tax systems at the department. In order to accomplish this, DWS would need to contract with outside computer programmers to modify the UI claims and tax systems by the effective date of July 1, 2011.

In August 2010, the Secretary of GSD presented the FY12 proposed risk rates charged for public liability, public property, workers compensation and unemployment compensation to the LFC. The proposed rates included a \$15.6 million, or 268 percent increase for charges related to unemployment compensation for state agencies and school districts. GSD indicated that in FY10 unemployment compensation claims for public employees increased from an average of \$1 million per quarter to over \$3 million per quarter. Furthermore, the Secretary described the cause of the situation to be the laws that allow individuals who have either retired or voluntarily separated employment with the state, school district or local public body; are employed by a private organization for a period of less than 18 months (referred to as a base period); are laid off and are entitled to benefits paid for by the state.

In response to the situation described above, the LFC endorsed legislation aimed at correcting the problem and reducing future unemployment compensation claims (Senate Bill 251). However, GSD's analysis of the Senate Bill 251 provided limited information, no fiscal impact and suggested that responsibility for the collection and payment of unemployment compensation premiums be transferred to either the DWS or the Department of Finance and Administration (DFA).

### **SIGNIFICANT ISSUES**

The Department of Workforce Solutions identified the following significant issues:

According to the U.S. Department of Labor, SB 251 raises a significant issue in that it conflicts with the requirements of Section 3304(a)(10) of the Federal Unemployment Tax Act (FUTA), which requires, as a condition for approval of the state law, that

“compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income.” Because voluntarily quitting does not constitute any of the reasons for which wage credits may be canceled or benefits rights totally reduced, any cancellation/total reduction would create an issue with the requirements of Section 3304(a)(10) of FUTA.

An additional issue is raised because Section 3304(a)(6)(A) of FUTA contains an “equal treatment” provision that requires, as a condition for certification of the state’s unemployment compensation law, that compensation be “payable on the basis of service of which Section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service” subject to the state law. Section 3309(a)(1) of FUTA applies to services performed for state and local governments, certain nonprofit organizations and federally recognized Indian tribes. This “equal treatment” requirement means that all qualifying, benefit formula, eligibility and disqualification provisions applicable to other services must apply equally to services performed for state and local governments, Indian tribes and nonprofit organizations, including services performed for educational institutions. Given that the proposed bill is limited to governmental entities and public employees, it violates the “equal treatment” provisions of 3304(a)(10).

In addition, the language below conflicts with the “equal treatment” provision of Section 3304(a)(6)(A) of FUTA because it provides for additional eligibility requirements for “temporary legislative session employees” (governmental employees) when it states:

The following benefit eligibility conditions apply to a temporary legislative session employee:

- (1) except as provided in Paragraph (2) of this subsection, a temporary legislative session employee shall be ineligible for a week of unemployment benefits that commences during a period between two regular sessions of the legislature unless the individual establishes to the satisfaction of the secretary that the individual is available for and is making an active search for permanent full-time work; and
- (2) a temporary legislative session employee who has been employed by the New Mexico legislative branch during two successive regular sessions of the legislature shall be presumed to be unavailable for permanent new work during a period after the second successive regular session of the legislature that the individual was employed as a temporary legislative session employee.

## **ADMINISTRATIVE IMPLICATIONS**

The bill would require that DWS revise UI claims and tax processes and determinations.

GSD suggests that it is important to note that the unemployment claims paid by GSD are strictly dependent on billings provided by DWS. GSD solely serves as a collector of unemployment compensation assessments and payer of the DWS quarterly billing.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Retention of current law.

DA/mew