F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	09/21/11		
SPONSOR	Doyle	**LAST UPDATED**	09/23/11	**HB**	31
SHORT TITLE	Unemployment Contribution Rates & Council			**SB**	
				ANALYST	Aledo-Sandoval

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	**FY13**		
$65,000.0	$65,000.0	Nonrecurring	Unemployment Compensation Fund
($65,000.0)	($65,000.0)	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	2 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$3.8	$7.6	$11.4	Nonrecurring	Federal Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB19, HB44, SB29, and SB37

SOURCES OF INFORMATION
LFC Files

Responses Received From
Workforce Solutions Department (WSD)

SUMMARY

Synopsis of Bill

House Bill 31 seeks to: (1) require unemployment contributions to remain at the Unemployment Insurance (UI) Contribution Schedule 1 rate from January 1, 2011 through December 31, 2013; (2) provide per diem and mileage for State Unemployment Compensation Advisory Council Members; (3) direct the State Unemployment Compensation Advisory Council to make recommendations to the legislature for statutory changes to provide a permanent solution for the solvency of the unemployment compensation fund; (4) and appropriate $130 million dollars from the general fund to the unemployment compensation fund.

Under current law, the UI Contribution Schedule 1 is implemented from January 1, 2011 through December 31, 2011.

FISCAL IMPLICATIONS

HB 31 attempts to address the impending solvency crisis facing the Unemployment Insurance Trust Fund.

Calendar Year Analysis

HB 31 proposes to implement employer contribution schedule 1 on January 1, 2012 through December 31, 2013. As a result of this legislation, New Mexico employers will continue to pay into the Unemployment Compensation fund at the current contribution schedule 1 rates for an additional two years.

Based on current WSD projections, contribution schedule 1 in CY12 will result in total revenues of $198.9 million. Total expenditures for the same period are projected to be $258 million. WSD confirms that with Schedule 1 in effect, during 2012 and 2013, the fund will pay out more in benefits than it receives in revenue causing the fund balance to reach possible insolvency within the first quarter of 2013. The projected deficit between contributions and expenditures in CY 2012 is $59.1 million. With contribution schedule 1 in effect for CY 2012, the WSD projected ending UI trust balance on December 31, 2012 is $28.3 million.

(in millions)	Est. Total Contributions (Schedule 1)	Est. Total Benefits
CY 2012	$198.9	$258.0

Although each quarter in CY12 concludes with a projected positive fund balance, there may be cash flow problems in CY12. LFC has requested detailed projections from WSD to better understand the fund's quarterly cash flow and volatility. Assessing these risk factors allows for better understanding of when the fund may, or may not, need other financing options to stabilize the fund in CY12.

UI Cash Balance Projection

					Fund Balance	
Calendar Year	Quarter	Schedule	Revenue	Benefits	Beginning	Ending
2011	Q3	1	55.5	71.5	133.1	117.1
2011	Q4	1	39.9	69.6	117.1	87.4
2012	Q1	1	31.8	64.5	87.4	54.7
2012	Q2	1	75.6	64.5	54.7	65.8
2012	Q3	1	53.3	64.5	65.8	54.6
2012	Q4	1	38.2	64.5	54.6	28.3
2013	Q1	1	30.4	61.4	28.3	(2.7)
2013	Q2	1	82.8	61.4	(2.7)	18.7
2013	Q3	1	57.9	61.4	18.7	15.2
2013	Q4	1	41.5	61.4	15.2	(4.7)

HB 31 also makes two separate appropriations for both FY12 and FY13 from the general fund in the amount of $65 million. These appropriations are identified in the bill as non-reverting. WSD reports that the revenue from the general fund may assist in maintaining the trust fund solvency through CY13.

The following table illustrates the trust fund balance at the end of each quarter through calendar year 2013 and the impact of the transfer of the $130 million on the ending trust fund balances.

					Fund Balance		General Fund Appropriation	Fund Balance w/ GF appropriation	
Calendar Year	Quarter	Schedule	Revenue	Benefits	Beginning	Ending		Beginning	Ending
2011	Q3	1	55.5	71.5	133.1	117.1		133.1	117.1
2011	Q4	1	39.9	69.6	117.1	87.4		117.1	87.4
2012	Q1	1	31.8	64.5	87.4	54.7		87.4	54.7
2012	Q2	1	75.6	64.5	54.7	65.8	65.0	119.7	130.8
2012	Q3	1	53.3	64.5	65.8	54.6		130.8	119.6
2012	Q4	1	38.2	64.5	54.6	28.3		119.6	93.3
2013	Q1	1	30.4	61.4	28.3	(2.7)		93.3	62.3
2013	Q2	1	82.8	61.4	(2.7)	18.7	65.0	127.3	148.7
2013	Q3	1	57.9	61.4	18.7	15.2		148.7	145.2
2013	Q4	1	41.5	61.4	15.2	(4.7)		145.2	125.3

Source: WSD

Based on the July 2011 Consensus Revenue Forecast, the FY12 general fund reserves were estimated at $475.6 million or 8.8 percent of recurring appropriations. FY13 general fund reserves were estimated at $367.7 million. These reserve levels in FY12 and FY13 did not include the possible $100 million deficiency request that Medicaid may make, the special session cost, or the potential loss of $40 million in tobacco funds. The forecast also assumed that the FY13 appropriations would remain flat. Except for a four percent increase in Medicaid no increases were assumed for agencies or education. The preliminary budget requests from the agencies show an increase in FY13 over FY12. Given these additional demands for the general fund our reserves could be below 5 percent in FY12 and FY13 without the appropriation in the bill.

There is concern about downside risk to the revenue estimates given recent weakness in the economy and financial markets.

HB 31 does not include contingency language requesting the WSD secretary to provide updated projections or monthly detailed cash flow forecasts prior to the general fund transfer indicating the actual need for the transfer. HB 31 appropriates $130 million to the Unemployment Compensation Fund; however, WSD has not provided details explaining the need for the $130 million. Conversely, the actual amount needed to stabilize the fund during CYs 12 or 13 could be substantially above or below the $130 million figure.

As experienced during the first half of 2011, unemployment rates have been on the decrease leading to lower benefits paid than originally projected during the regular legislative session early this year. This effectively pushed out the trust funds impending insolvency by a year from March of 2012 to March of 2013. Projecting the trust fund balances is a complex endeavor. There are assumptions made about the unemployment rate in order to project annual level of benefits paid to claimants. If projected unemployment rates are substantially different from actual unemployment rates, the overall fund balance projection will be off.

Fiscal Year Analysis

Employer contribution total for FY 12 is shown in the table below. The projected deficit between contributions and expenditures in FY 2012 under schedule 1 is $67.3 million.

(in millions)	Est. Total Contributions (Schedule 1)	Est. Total Benefits
FY 2012	$202.8	$270.1

Other Fiscal Considerations

HB 31 reinstates the contribution trigger system for calendar years after 2013. The statutory triggers for the unemployment insurance contribution schedule, found in NMSA 1978 § 51-1-11, depend on the ratio of fund balance on June 30 to total payroll at the end of the previous calendar year. According to WSD's most recent projections, if schedule 1 were in place for CY 12 and the first $65 million general fund appropriation is transferred prior to the end of FY 12 the June 30, 2012 balance is estimated to be $130.8 million. This fund balance is likely to trigger schedule 5 for 2013 if the current trigger system is still in place.

It is critical to build up the fund to avoid insolvency. The WSD trust fund balance forecast is very unstable as observed by the forecast variation from January 2011 to July 2011. The Legislature will have the opportunity to review new fund balance projections in January of 2012.

The U.S. Department of Labor (USDOL) suggests that, to be minimally solvent, a state's reserve balance should provide for one year's projected benefit payment needs on the basis of the highest levels of benefit payments experienced by the state over the last twenty years.

Unemployment benefits are an entitlement, although the program is financed by a dedicated tax imposed on employers, and not by general revenues. Even in a recession, if a given state's trust account is depleted, the state remains legally required to continue paying benefits which it does by obtaining loans through the federal government or with other financing options.

SIGNIFICANT ISSUES

WSD reported that HB 31 would require the secretary to appoint a State Unemployment Compensation Advisory Council. The Council would provide recommendations to the New Mexico legislature for statutory changes to provide for a permanent solution for the solvency of the New Mexico unemployment compensation fund. In preparing its recommendations, the council is to consider the following objectives: (1) refining the formula for determining contribution rate schedules that determine an employer's contribution to the unemployment compensation fund each calendar year; (2) reevaluating and restructuring the contribution rate schedules and the employer experience rating banding within each contribution rate schedule; (3) adding a ceiling and floor mechanism that adjusts if the unemployment compensation fund reaches a high balance or is near insolvency; and (4) determining a target unemployment compensation fund balance or ratio.

The Department notes that the objectives set forth in HB 31 will aid it in formulating policies and discussing issues relating to the administration and improvement of New Mexico's unemployment compensation law. Advisory councils exist in at least twenty states to ensure sound and legal unemployment compensation programs. The federal government also has an advisory council for the same purpose. These advisory councils serve the respective states in the development of UI policies and in discussing problems related to the administration of the UI compensation program. WSD asserts that advisory councils apply expert technical analysis to evaluate the respective unemployment compensation programs, including the purpose, goals, coverage, benefit adequacy, trust fund solvency, contribution schedules, funding of administrative costs, administrative efficiency, and any other aspects of the program and make recommendations for improvements.

WSD adds that the advisory council as set forth in HB 31 would serve to advise the department in its administration of NM UI law, report its view on pending legislation affecting the UI program and the solvency of the UI trust fund, and submit its recommended changes to the legislature. The Council would seek and accept broad input from employers, employees, their representatives, legislators, and the general public regarding the UI program, develop sound policy and identify support for legislative action. As a result, the council, along with WSD, would recommend carefully considered refinements in policy that tend to balance the interests of all stakeholders in the process. WSD asserts that the Council would serve as a competent and strong advisory body in the administration of UI law. As in other states that have advisory councils, the Council's composition, process and effectiveness and the resulting legislative deference to its recommendations will assure a steady policy direction by tempering the tendency to engage in wide swings in legislative policy. The traditional support for advisory councils nationwide is systemic and recognized as integral to the legislative process. HB 31 requires that the Council present recommendations to the legislature by November 1, 2012.

Governor's Martinez's partial veto of HB 59 eliminated the prescribed employer contribution schedule 3, subsequently creating a void for the 2012 employer contribution schedule. The New Mexico Supreme Court, acknowledging the 2011 special legislative session as an opportunity for the Governor and Legislature to reach a solution, did not rule on the constitutionality of the partial veto.

With no schedule in place for 2012, U.S. Department of Labor representatives have indicated that New Mexico contributing employers will lack the qualifications necessary in order to receive the maximum 5.4 percent tax credit against their Federal Unemployment Tax Act (FUTA) liability. The total federal liability for the 2012 tax year would be 6 percent. The result would be a tax increase for the majority of New Mexico employers. WSD estimates the total cost to employers in 2012 in the absence of a state contribution schedule would be $486.2 million.

Three years ago, the New Mexico UI trust fund was one of the most solvent in the United States, with a balance of $553.3 million. However, as of September 14, 2011, the WSD reported the UI

Trust Fund balance was $126.7 million. Due to almost a 500 percent increase in unemployment insurance claims over the past two years, the WSD has experienced unprecedented demand on the trust fund. Daily payments to claimants have ranged from $750 thousand to $1 million. In FY11, $310 million was spent on unemployment benefits.

In an effort to delay or prevent trust fund insolvency, the legislature reduced a number of benefits. On July 1, 2011, statutory changes to UI benefits went into effect including a decrease in the number of qualifying dependents eligible to receive the weekly $25 dependent allowance; elimination of UI benefit payments to individuals attending school full-time, except those in an approved vocational training institution program, unless recipient demonstrates he is actively seeking full- or part-time work; and a limit on extended benefits.

Although the unemployment rate has decreased, initial unemployment claims have increased during the last two quarters reported by WSD.

In the General Appropriations Act of 2011 the Legislature provides for the transfer of up to $30 million during fiscal year 2012 from the tobacco settlement permanent fund to ensure fund solvency. The transfer is contingent upon certification by the WSD secretary that there will be insufficient amounts to pay benefits and that the department can repay the loan by June 30, 2012.

The USDOL also offers federal UI interest free cash-flow loans that must be repaid by October 1 of the same calendar year. These interest free loans are currently only available through the end of this federal fiscal year unless there is a congressional reauthorization. There are also interest-bearing loans available through the USDOL. Interest payments on any loans, including DOL and loans from the state's general fund, cannot be paid from regular state UI tax collections or federal revenues. However, principal on these loans could be repaid with employer contributions according to WSD.

Many states are imposing "interest assessments" or "interest surcharges" on employers to help pay back federal loans. These special assessments are set aside in a separate account. The timing of a surcharge is critical because legislation has to be in place and funds have to be available by October of the calendar year that the loan was issued.

Interest on DOL loans would need to be paid to avoid penalties, such as potential FUTA credit reductions. Loss of FUTA credit would result in New Mexico employers being faced with increased federal unemployment taxes.

ADMINISTRATIVE IMPLICATIONS

The proposed legislation will require the Department to print and distribute wage and contribution reports to all contributing employers in the state at an approximate cost of $76 thousand. The Department should be able to cover these costs with federal funding. Since this function is performed every year, there is no additional fiscal impact.

WSD will be required to make appointments to the advisory council, in accordance with HB 31. Additionally, the department will be required to coordinate and perform all administrative duties, associated with the advisory council and its meetings. The Department estimates that for FY 12, the per diem expenses will be $3,800. For FY 13, the Department estimates $7,600 in per diem expenses. The Department should be able to cover these costs with federal funding.

OTHER SUBSTANTIVE ISSUES

The USDOL released overpayment figures for states on September 14, 2011. From July 2010 to June 2011, New Mexico's estimated overpayment of benefits was $60.5 million, which is 22.4 percent of the total benefits paid during the same period. This raises concerns over the management of the UI program.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Absent of a court decision or legislative action there will be no employer contribution schedule based on experience ratings in 2012. Lack of a schedule in 2012 would impose the federal tax liability on New Mexico contributing employers. That tax liability is 6 percent. LFC has requested a cost impact estimate from WSD if the federal tax liability goes into effect in 2012. WSD estimates the total cost to employers in 2012 in the absence of a state contribution schedule would be $486.2 million.

MCAS/svb

	FY10				FY11				FY12				FY13				FY14	
	09:3	09:4	10:1	10:2	10:3	10:4	11:1	11:2	11:3	11:4	12:1	12:2	12:3	12:4	13:1	13:2	13:3	13:4
Beginning Fund Balance (FMB)		**307.6**	**242.1**	**171.8**	**123.0**	**81.4**	**171.5**	**125.6**	**133.1**	117.1	87.4	54.7	65.8	54.6	28.3	(2.7)	18.7	15.2
Sources																		
Employer Contributions	**30.8**	**18.5**	**21.5**	**48.1**	**48.5**	**33.2**	**26.7**	**75.0**										
Transfer from state UI fund						**117.8**												
ARRA funds to modernize UI laws	**13.0**			**26.0**														
Combined wage claim deposits and interest	**7.2**	**4.7**	**4.9**	**4.0**	**3.9**	**4.3**	**4.6**	**5.3**										
Sources Subtotal	**51.0**	**23.2**	**26.4**	**78.1**	**52.4**	**155.3**	**31.3**	**80.3**	55.5	39.9	31.8	75.6	53.3	38.2	30.4	82.8	57.9	41.5
Uses																		
Regular Benefits Paid	**(96.5)**	**(89.4)**	**(97.0)**	**(101.9)**	**(94.6)**	**(64.5)**	**(77.6)**	**(73.4)**	(71.5)	(69.6)	(64.5)	(64.5)	(64.5)	(64.5)	(61.4)	(61.4)	(61.4)	-61.4
W/D for Spec A and UI Modernization			**(1.2)**	**(1.9)**	**(2.5)**	**(4.7)**	**(4.4)**	**(3.0)**										
Uses Subtotal	**(96.5)**	**(89.4)**	**(98.2)**	**(103.8)**	**(97.1)**	**(69.2)**	**(82.0)**	**(76.4)**										
Net Margin - Surplus (Deficit)	**(45.5)**	**(66.2)**	**(71.8)**	**(25.7)**	**(44.7)**	**86.1**	**(50.7)**	**3.9**	(16.0)	(29.7)	(32.7)	11.1	(11.2)	(26.3)	(31.0)	21.4	(3.5)	(19.9)
Reconciliation (to be explained)		0.7	1.5	(23.1)	3.1	4.0	4.8	3.6										
Ending Fund Balance	**307.6**	**242.1**	**171.8**	**123.0**	**81.4**	**171.5**	**125.6**	**133.1**	117.1	87.4	54.7	65.8	54.6	28.3	(2.7)	18.7	15.2	(4.7)

Notes:
Schedule 1 - 1/1/11 - 12/31/2013
7/1/11 - changes in benefits (full-time student and dependent reduction)
WSD projection - forecast rates of 8.3 percent for 2011, 7.87 percent for 2012 and 7.64 percent for 2013.
Bold fund balances figures correspond to Financial Management Bureau Ending Trust Fund Balance
WSD Projected Employer Contributions include - employer contributions, interest earned, overpayment collections, combined wage claim deposits

The statutory triggers for the unemployment insurance contribution schedule, found in NMSA 1978 § 51-1-11, depend on the ratio of fund balance on June 30 to total payroll at the end of the previous calendar year. Using 2010 payroll data, the following table illustrates the necessary minimum UI fund balances for each schedule.

2010 Total Payroll = $21,802,598,044

Contribution Schedules	Percent of Total Payroll	Minimum Required Fund Balance
Schedule 0	fund balance > 2.3%	501,459,755
Schedule 1	2.3% > fund balance > 1.7%	370,644,167
Schedule 2	1.7% > fund balance > 1.3 %	283,433,775
Schedule 3	1.3% > fund balance > 1.0 %	218,025,980
Schedule 4	1.0% > fund balance > 0.7 %	152,618,186
Schedule 5	0.7% > fund balance > 0.3%	65,407,794
Schedule 6	0.3 % > fund balance	<65,407794

Employer Contribution Schedule	UI Employer Contribution Rate	2011 Estimated Average Contributions per Employee	Difference Between Schedule 1	Projected Annual Revenue in CY 2012 (in millions)	Projected Annual Spending in CY 2012 (in millions)	Projected Total Fund Balance as of 6/30/2013 (in millions)
Schedule 0	0.03 – 5.4%	$274.37	-			
Schedule 1	0.05 – 5.4%	$324.93	-	$198.9	$258.0	$18.7
Schedule 2	0.1 – 5.4%	$351.00	+$26.07	$214.0	$258.0	$42.9
Schedule 3	0.6 – 5.4%	$491.92	+$166.99	$283.3	$258.0	$156.9
Schedule 4	0.9 – 5.4%	$536.93	+$212.00	$306.1	$258.0	$194.5
Schedule 5	1.2 – 5.4%	$581.94	+$257.01	$328.9	$258.0	$232.0
Schedule 6	2.7 – 5.4%	$645.66	+$320.73	$363.8	$258.0	$293.4

Source: WSD

Note: Projected annual revenues is based on schedule 1 contribution received during quarter 1 of 2012 and the corresponding schedule revenues received for quarter 2 through quarter 4.

Regular Unemployment Benefits by Quarter

Year:Qtr	Regular Benefits Paid	Initial Claims	First Payments	Weeks Claimed	Weeks Compensated	Average Duration	Exhaustions	Exhaustion Rate	AWBA	AWBA as % of AWW
2005.1	30,944,000	15,765	8,921	177,721	146,118	17.90	3,373	43.4	213.71	37.0
2005.2	29,135,000	14,788	7,865	161,053	137,057	17.40	3,466	42.6	214.53	36.6
2005.3	25,916,000	12,195	6,066	143,733	118,828	17.50	3,240	43.2	220.66	37.5
2005.4	23,046,000	14,207	6,099	130,682	104,006	17.50	2,833	41.7	224.17	37.7
	109,041,000	56,955	28,951	613,189	506,009					
2006.1	25,236,000	9,060	6,232	139,847	110,958	17.90	2,045	38.6	229.13	37.9
2006.2	25,298,000	13,524	6,190	137,962	110,337	18.10	2,224	35.7	231.38	38.0
2006.3	25,418,000	10,671	6,119	128,497	106,534	17.50	2,433	36.3	241.08	38.8
2006.4	25,390,000	13,419	6,847	121,189	102,187	16.90	2,703	38.3	250.38	39.9
	101,342,000	46,674	25,388	527,495	430,016		9,405			
2007.7	31,379,000	13,328	8,290	146,853	127,660	15.80	2,769	38.3	247.31	39.0
2007.2	31,195,000	13,776	7,345	145,973	125,854	16.20	3,259	41.1	249.74	38.7
2007.3	30,981,000	12,383	7,076	142,064	121,011	16.10	3,050	41.6	258.51	39.5
2007.4	32,191,000	15,005	7,689	141,745	120,197	16.30	3,056	42.4	269.73	40.6
	125,746,000	54,492	30,400	576,635	494,722		12,134			
2008.1	39,213,000	14,523	8,989	166,641	145,520	16.50	3,386	43.1	270.78	40.4
2008.2	38,914,000	14,792	8,343	165,137	142,574	16.50	3,774	43.6	274.74	40.4
2008.3	39,750,000	15,819	8,559	175,550	142,980	16.40	3,838	45.2	280.73	40.8
2008.4	47,886,000	22,325	11,819	207,280	169,199	15.90	4,086	47.0	284.90	40.0
	165,763,000	67,459	37,710	714,608	600,273		15,084			
2009.1	80,772,000	30,146	19,668	340,767	280,418	15.20	5,702	51.8	289.54	40.4
2009.2	99,863,000	26,573	16,528	410,402	341,219	16.50	8,117	57.7	295.08	40.8
2009.3	94,271,000	23,241	12,949	386,308	315,935	18.20	11,890	61.6	302.01	41.4
2009.4	88,912,000	26,520	13,601	342,157	286,970	19.50	10,322	63.7	315.35	42.2
	363,818,000	106,480	62,746	1,479,634	1,224,542		36,031			
2010.1	97,393,000	27,269	15,200	361,272	308,755	21.50	9,291	65.0	320.18	43.1
2010.2	95,361,000	25,874	14,234	345,647	299,275	21.60	9,380	65.2	321.93	43.7
2010.3	86,680,000	22,676	11,946	303,628	277,153	21.30	9,241	65.6	316.25	44.0
2010.4	75,401,000	24,396	12,365	288,293	251,759	21.20	8,501	65.0	302.42	43.7
	354,835,000	100,215	53,745	1,298,840	1,136,942		36,413			
2011.1	77,498,000	24,794	13,824	303,481	267,448	20.90	8,186	63.3	292.16	42.4
2011.2	72,448,000	26,615	12,697	279,777	250,910	20.60	7,559	61.4	291.29	41.0

average duration out of regular week