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HOUSE BILL 194

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; DECREASING EMPLOYER CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION FUND TO CONTRIBUTION SCHEDULE 2 FOR CALENDER YEAR 2013; CREATING THE STATE UNEMPLOYMENT ADVISORY COUNCIL; PROVIDING FOR APPOINTMENT OF COUNCIL MEMBERS; DIRECTING THE COUNCIL TO MAKE RECOMMENDATIONS TO THE LEGISLATURE AND THE GOVERNOR; PROVIDING FOR PER DIEM AND MILEAGE FOR COUNCIL MEMBERS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

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

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

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

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

24 (3) is employed part time by a base-period
25 employer who is not on a reimbursable basis and who continues

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1 to furnish the individual the same part-time work while the
2 individual is separated from full-time work for a
3 nondisqualifying reason; or

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

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

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

16 (1) separated from employment due to domestic
17 abuse, as "domestic abuse" is defined in Section 40-13-2 NMSA
18 1978; or

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

24 E. All contributions to the fund shall be pooled
25 and available to pay benefits to any individual entitled

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1 thereto, irrespective of the source of the contributions.

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

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

22 (2) an employer that, at the time of
23 establishing an account, is in business in another state or
24 states and that is not currently doing business in New Mexico
25 may elect, pursuant to Paragraph (3) of this subsection, to

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1 receive a beginning contribution rate of two percent or a
2 contribution rate based on the current contribution rate
3 schedule in Paragraph (4) of Subsection I of this section,
4 whichever is lower, if:

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

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

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

25 G. An employer may make voluntary payments in

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1 addition to the contributions required under the Unemployment
2 Compensation Law, which shall be credited to the employer's
3 account in accordance with department rule. The voluntary
4 payments shall be included in the employer's account as of the
5 employer's most recent computation date if they are made on or
6 before the following March 1. Voluntary payments when accepted
7 from an employer shall not be refunded in whole or in part.

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

14 (1) as used in this subsection:

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

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

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

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1 (d) "experience history" means the
2 experience rating record and reserve account, including the
3 actual contributions, benefit charges and payroll experience of
4 the employing enterprise;

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

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

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

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

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

25 (b) notice of the transfer has been

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1 given in accordance with the rules of the secretary during the
2 calendar year of the transaction transferring the employing
3 enterprise or the date of the actual transfer of control and
4 operation of the employing enterprise;

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

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

25 (3) the applicable experience history may be

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

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

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

25 (c) files with the application a Form

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

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

.188178.2

1 both employers shall be recalculated and made effective
2 immediately upon the date of the transfer;

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

- 15 (a) the cost of acquiring the business;
16 (b) whether the person continued the
17 business enterprise of the acquired business;
18 (c) how long such business enterprise
19 was continued; and
20 (d) whether a substantial number of new
21 employees were hired for performance of duties unrelated to
22 those that the business activity conducted prior to
23 acquisition;

24 (6) if, following a transfer of experience
25 history pursuant to this subsection, the department determines

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1 that a substantial purpose of the transfer of the employing
2 enterprise was to obtain a reduced liability for contributions,
3 then the experience rating accounts of the employers involved
4 shall be combined into a single account and a single rate
5 assigned to the combined account;

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

9 (a) describe how experience history is
10 to be transferred; and

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

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

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1 term not to exceed ninety days or both. In addition, such a
2 person shall be subject to the following civil penalty imposed
3 by the secretary:

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

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

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

22 (1) the total assets in the fund and the total
23 of the last annual payrolls of all employers subject to
24 contributions as of the computation date for each year shall be
25 determined. These annual totals are here called "the fund" and

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

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

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

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

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

25 (d) Contribution Schedule 3 of the table

.188178.2

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1 provided in Paragraph (4) of this subsection if the fund equals
2 less than one and three-tenths percent but not less than one
3 percent of the total payrolls;

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

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

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

15 (3) as used in this section:

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

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

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

.188178.2

1 and

2 (d) "computation date" for each calendar
3 year means the close of business on June 30 of the preceding
4 calendar year;

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

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

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1	10.0% and over	0.9%	1.2%	2.7%
2	9.0%-9.9%	1.2%	1.5%	2.7%
3	8.0%-8.9%	1.5%	1.8%	2.7%
4	7.0%-7.9%	1.8%	2.1%	2.7%
5	6.0%-6.9%	2.1%	2.4%	2.7%
6	5.0%-5.9%	2.4%	2.7%	3.0%
7	4.0%-4.9%	2.7%	3.0%	3.3%
8	3.0%-3.9%	3.0%	3.3%	3.6%
9	2.0%-2.9%	3.3%	3.6%	3.9%
10	1.0%-1.9%	3.6%	3.9%	4.2%
11	0.9%-0.0%	3.9%	4.2%	4.5%
12	(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
13	(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
14	(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
15	Under (-2.0%)	5.4%	5.4%	5.4%;

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

20 (6) from January 1, 2012 through December
21 31, 2012, each employer making contributions pursuant to this
22 subsection shall make a contribution at the rate specified in
23 Contribution Schedule 3; and

24 (7) from January 1, 2013 through December
25 31, 2013, each employer making contributions pursuant to this

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1 subsection shall make a contribution at the rate specified in
2 Contribution Schedule 2.

3 J. The division shall promptly notify each
4 employer of the employer's rate of contributions as determined
5 for any calendar year pursuant to this section. Such
6 notification shall include the amount determined as the
7 employer's average payroll, the total of all of the employer's
8 contributions paid on the employer's behalf and credited to
9 the employer's account for all past years and total benefits
10 charged to the employer's account for all such years. Such
11 determination shall become conclusive and binding upon the
12 employer unless, within thirty days after the mailing of
13 notice thereof to the employer's last known address or in the
14 absence of mailing, within thirty days after the delivery of
15 such notice, the employer files an application for review and
16 redetermination, setting forth the employer's reason therefor.
17 The employer shall be granted an opportunity for a fair
18 hearing in accordance with rules prescribed by the secretary,
19 but an employer shall not have standing, in any proceeding
20 involving the employer's rate of contributions or contribution
21 liability, to contest the chargeability to the employer's
22 account of any benefits paid in accordance with a
23 determination, redetermination or decision pursuant to Section
24 51-1-8 NMSA 1978, except upon the ground that the services on
25 the basis of which such benefits were found to be chargeable

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1 did not constitute services performed in employment for the
2 employer and only in the event that the employer was not a
3 party to such determination, redetermination or decision, or
4 to any other proceedings under the Unemployment Compensation
5 Law in which the character of such services was determined.
6 The employer shall be promptly notified of the decision on the
7 employer's application for redetermination, which shall become
8 final unless, within fifteen days after the mailing of notice
9 thereof to the employer's last known address or in the absence
10 of mailing, within fifteen days after the delivery of such
11 notice, further appeal is initiated pursuant to Subsection D
12 of Section 51-1-8 NMSA 1978.

13 K. The division shall provide each contributing
14 employer, within ninety days of the end of each calendar
15 quarter, a written determination of benefits chargeable to the
16 employer's account. Such determination shall become
17 conclusive and binding upon the employer for all purposes
18 unless, within thirty days after the mailing of the
19 determination to the employer's last known address or in the
20 absence of mailing, within thirty days after the delivery of
21 such determination, the employer files an application for
22 review and redetermination, setting forth the employer's
23 reason therefor. The employer shall be granted an opportunity
24 for a fair hearing in accordance with rules prescribed by the
25 secretary, but an employer shall not have standing in any

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1 proceeding involving the employer's contribution liability to
2 contest the chargeability to the employer's account of any
3 benefits paid in accordance with a determination,
4 redetermination or decision pursuant to Section 51-1-8 NMSA
5 1978, except upon the ground that the services on the basis of
6 which such benefits were found to be chargeable did not
7 constitute services performed in employment for the employer
8 and only in the event that the employer was not a party to
9 such determination, redetermination or decision, or to any
10 other proceedings under the Unemployment Compensation Law in
11 which the character of such services was determined. The
12 employer shall be promptly notified of the decision on the
13 employer's application for redetermination, which shall become
14 final unless, within fifteen days after the mailing of notice
15 thereof to the employer's last known address or in the absence
16 of mailing, within fifteen days after the delivery of such
17 notice, further appeal is initiated pursuant to Subsection D
18 of Section 51-1-8 NMSA 1978.

19 L. The contributions, together with interest and
20 penalties thereon imposed by the Unemployment Compensation
21 Law, shall not be assessed nor shall action to collect the
22 same be commenced more than four years after a report showing
23 the amount of the contributions was due. In the case of a
24 false or fraudulent contribution report with intent to evade
25 contributions or a willful failure to file a report of all

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1 contributions due, the contributions, together with interest
2 and penalties thereon, may be assessed or an action to collect
3 such contributions may be begun at any time. Before the
4 expiration of such period of limitation, the employer and the
5 secretary may agree in writing to an extension thereof and the
6 period so agreed on may be extended by subsequent agreements
7 in writing. In any case where the assessment has been made
8 and action to collect has been commenced within four years of
9 the due date of any contribution, interest or penalty,
10 including the filing of a warrant of lien by the secretary
11 pursuant to Section 51-1-36 NMSA 1978, such action shall not
12 be subject to any period of limitation.

13 M. The secretary shall correct any error in the
14 determination of an employer's rate of contribution during the
15 calendar year to which the erroneous rate applies,
16 notwithstanding that notification of the employer's rate of
17 contribution may have been issued and contributions paid
18 pursuant to the notification. Upon issuance by the division
19 of a corrected rate of contribution, the employer shall have
20 the same rights to review and redetermination as provided in
21 Subsection J of this section.

22 N. Any interest required to be paid on advances to
23 this state's unemployment compensation fund under Title 12 of
24 the Social Security Act shall be paid in a timely manner as
25 required under Section 1202 of Title 12 of the Social Security

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1 Act and shall not be paid, directly or indirectly, by the
2 state from amounts in the state's unemployment compensation
3 fund."

4 SECTION 2. Section 51-1-25 NMSA 1978 (being Laws 1959,
5 Chapter 321, Section 5, as amended) is repealed and a new
6 Section 51-1-25 NMSA 1978 is enacted to read:

7 "51-1-25. [NEW MATERIAL] STATE UNEMPLOYMENT ADVISORY
8 COUNCIL.--

9 A. There is created a "state unemployment advisory
10 council" consisting of nine members. The secretary or the
11 secretary's designee shall serve as an ex-officio voting
12 member. The remaining eight members shall be appointed so as
13 to ensure representation of the state's demographics,
14 including geographic distribution, gender and ethnic
15 diversity, and as follows:

16 (1) two members appointed by the president
17 pro tempore of the senate;

18 (2) two members appointed by the minority
19 floor leader of the senate;

20 (3) two members appointed by the speaker of
21 the house of representatives; and

22 (4) two members appointed by the minority
23 floor leader of the house of representatives.

24 B. Initially, appointing entities shall choose one
25 member for a two-year term and one member for a four-year

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~~[bracketed material] = delete~~

1 term. After the initial appointments, all appointed members
2 shall serve four-year terms. Terms shall expire on January 1.
3 Appointed members shall serve until their successors are
4 appointed. A vacancy occurring other than by expiration of
5 term shall be filled in the same manner as the original
6 appointment, but only for the unexpired term.

7 C. Members of the council shall elect a chair from
8 among the membership of the council. The council shall meet
9 at the call of the chair at least four times per year.

10 D. A majority of the members currently serving
11 constitutes a quorum of the council.

12 E. Staff for the council shall be provided by the
13 department.

14 F. The council shall aid the department in
15 formulating policies and discussing problems relating to the
16 administration of the Unemployment Compensation Law and in
17 assuring impartiality and freedom from political influence in
18 the solution of such problems.

19 G. On or before November 1 of each year, the
20 council shall present recommendations to the legislature and
21 the governor for the furtherance of the purposes of the
22 Unemployment Compensation Law and for any changes necessary to
23 maintain the soundness of the unemployment compensation fund.
24 In preparing the recommendations, the council shall consider
25 the following 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
9 that adjusts if the unemployment compensation fund reaches a
10 high balance or is near insolvency; and

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

13 H. Members of the council shall receive per diem
14 and mileage as provided for nonsalaried public officers in the
15 Per Diem and Mileage Act and shall receive no other
16 compensation, perquisite or allowance.

17 I. Members of the council are public employees
18 within the meaning of the Tort Claims Act and are entitled to
19 all immunity and indemnification provided under that act."

20 SECTION 3. TEMPORARY PROVISION--APPOINTMENT TO STATE
21 UNEMPLOYMENT ADVISORY COUNCIL.--Within thirty days of July 1,
22 2012, members of the state unemployment advisory council shall
23 be appointed pursuant to Section 2 of this act.

24 SECTION 4. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2012.

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