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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/26/12  
**LAST UPDATED** 02/23/12    **HB** \_\_\_\_\_  
**SPONSOR**    Smith  
**SHORT TITLE**    Temporary Unemployment Fund Contributions    **SB** 32/aHJC  
**ANALYST**    Aledo-Sandoval

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
CY12	CY13	CY14		
(\$81,400.0)	(\$78,500.0)*	Unknown	Recurring	Unemployment Compensation Fund

(Parenthesis ( ) Indicate Revenue Decreases)

**\*Assuming difference between Schedule 3 and Schedule 2 in CY13.**

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

	FY12	FY13	2 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$178.0	\$178.0	\$356.0	Recurring	Federal Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Workforce Solutions Department (WSD)  
 Economic Development Department (EDD)  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee Amendment to Senate Bill 32 strikes the section in the bill that gave the Secretary, with approval of the governor, the ability to increase the contribution rate to the rate specified in Contribution Schedule 3, if, as of June 30, 2012, the total assets of the unemployment compensation fund are less than or equal to thirty percent of the total amount of benefits paid in calendar year 2011.

Synopsis of Bill

Senate Bill 32 proposes to: (1) implement unemployment insurance (UI) contribution schedule 1 effective January 1, 2012 through December 31, 2012; (2) implement contribution schedule 2 effective calendar year 2013; (3) provide the WSD secretary, with the approval of the governor, the authority to increase the employer contribution rate to the rate specified in contribution schedule 3 for calendar year 2013 if as of June 30, 2012 the total assets of the trust fund are less than or equal to 30 percent of the total amount of benefits paid in calendar year 2011.

Under current law, the UI Contribution Schedule 3 is implemented from January 1, 2012 through December 31, 2012 and Schedule 2 for calendar year 2013, beginning with calendar year 2014 the contribution schedule would be determined by the reserve ratio formula.

**FISCAL IMPLICATIONS**

SB 32 proposes to implement employer contribution schedule 1 on January 1, 2012 through December 31, 2012. Most recent WSD projections estimate a change to schedule 1 in 2012 would decrease employer contributions by an estimated \$81.4 million for calendar year (CY) 2012.

CY12 WSD Projected Contributions

	Schedule 1	Schedule 2	Schedule 3
(in millions)	\$234.5	\$254.1	\$315.9

CY12 WSD Projected Benefit Payout

	Schedule 1
(in millions)	\$254.4

According to WSD, the trust fund balance as of December 31, 2011 was \$79.5 million. However, the LFC has not received the final Financial Management Bureau figures for the 4<sup>th</sup> quarter of CY11.

Based on current WSD projections, contribution schedule 1 in CY12 would result in total revenues of \$234.5 million. Total expenditures for the same period are projected to be \$254.4 million. The projected deficit between contributions and expenditures in CY12 is \$19.9 million with schedule 1 in effect in CY12.

A shift to Schedule 1 in CY12 is projected by WSD to conclude each quarter of 2012 with positive fund balances. At Schedule 1, the fund balance at the end of CY12 is projected to be \$59.6 million. At Schedule 2 for CY13, the fund balance at year end is projected at \$41.3 million. Contrastingly, if Schedule 3 continues through CY12 and CY13 the year end fund balance is estimated at \$141 million and \$201.2 million, respectively.

Per SB 32, with Schedule 1 in effect for CY12, two scenarios can occur for CY13. If Schedule 2 applied for CY13, then the projected trust fund balance at the end of CY13 is \$41.3 million. At Schedule 3 for CY13, the projected CY13 year-end trust fund balance is \$103.6 million.

The Workforce Solutions Department is no longer using the estimated average contribution per employee table. The WSD asserts the table does not provide an accurate representation of employers' contributions.

### **SIGNIFICANT ISSUES**

Moving to Schedule 1 for CY12 and Schedule 2 for CY13 may require a transfer from the general fund or a short term financing mechanism to avoid any possible cash flow problems and borrowing from the federal government.

According to the Economic Development Department, increased employer contributions will increase costs to the state's employers, which will only magnify the detrimental impact of the poor economy.

### **ADMINISTRATIVE IMPLICATIONS**

The proposed legislation will require the Department to reprogram its legacy unemployment insurance tax system and the newly designed UFACTS system to be able to implement Contribution Schedule 1 for CY12 at a cost of approximately \$95,000.

Additionally, the Department states it will be required to reprint and distribute wage and contribution reports to all contributing employers in the state at an approximate cost of \$83,000. The Department should be able to cover these costs with federal funding.

### **TECHNICAL ISSUES**

The bill authorizes the secretary to increase the contribution schedule to schedule 3 if the total assets of the fund are equal to less than 30 percent of the total benefits paid in calendar year 2011. Senate Bill 32 does not specify if the fund balance is the Financial Management Bureau fund balance or the U.S. Treasury fund balance which will show different balances. The U.S. Treasury fund balance includes UI modernization and Special Administration funds (Reed Act). These funds are not used for the payment of benefits even though they are fund assets. The Financial Management Bureau fund balance best represents the assets available for payment of benefits. This is also the figure used for the reserve ratio in statute that triggers the contribution schedules.

### **OTHER SUBSTANTIVE ISSUES**

The WSD contends that SB 32 vests considerable discretion in the Executive Branch, namely the secretary and the governor, to move to a UI Contribution Schedule 3 if the circumstances of the UI Trust Fund are less than or equal to thirty percent of the total amount of benefits paid in CY11. WSD notes that SB 32 provides a seeming broad grant of discretion to move to Contribution Schedule 3 which poses potential constitutional issues involving separation of powers of the respective branches of government.

According to the Attorney General's Office, the authority granted to the executive to increase the contribution rate for the year 2013 is *permissive* rather than mandatory. The bill states the executive "may" increase the rate if certain conditions are met (as opposed to "shall").

SB 32 provides restrictions and arguably reasonable guidance to exercise the conferred executive use of discretion of whether to increase contribution schedules in 2013. SB 32 states the discretion is based upon the fund balance reaching 30 percent of the total amount of benefits paid in calendar year 2011 and the secretary can only increase it to Contribution Schedule 2, which provides specific rates based on an experience rating system.

The WSD observes that retroactive civil legislation does not raise constitutional questions on account of its retroactivity, if the legislative intent of retroactivity is expressly stated.

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