

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 39

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2011**

INTRODUCED BY

John M. Sapien

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; REQUIRING UNEMPLOYMENT CONTRIBUTIONS TO REMAIN AT THE CONTRIBUTION SCHEDULE 1 RATE THROUGH CALENDAR YEAR 2013 EXCEPT UNDER CERTAIN CIRCUMSTANCES; DIRECTING THE STATE UNEMPLOYMENT COMPENSATION ADVISORY COUNCIL TO MAKE RECOMMENDATIONS TO THE LEGISLATURE; REQUIRING AN ASSESSMENT ON EMPLOYERS UPON AN APPROPRIATION TO THE UNEMPLOYMENT COMPENSATION FUND; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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 contributing employer's account with all contributions paid by that employer

.187426.3

underscoring material = new  
~~[bracketed material] = delete~~

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

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

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

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

22 (3) is employed part time by a base-period  
23 employer who is not on a reimbursable basis and who continues  
24 to furnish the individual the same part-time work while the  
25 individual is separated from full-time work for a

.187426.3

underscoring material = new  
~~[bracketed material] = delete~~

1 nondisqualifying reason; or

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

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

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

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

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

21 E. All contributions to the fund shall be pooled  
22 and available to pay benefits to any individual entitled  
23 thereto, irrespective of the source of the contributions.

24 F. For each calendar year, if, as of the  
25 computation date for that year, an employer's account has been

.187426.3

underscoring material = new  
~~[bracketed material] = delete~~

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

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

19 (2) an employer that, at the time of  
20 establishing an account, is in business in another state or  
21 states and that is not currently doing business in New Mexico  
22 may elect, pursuant to Paragraph (3) of this subsection, to  
23 receive a beginning contribution rate of two percent or a  
24 contribution rate based on the current contribution rate  
25 schedule in Paragraph (4) of Subsection I of this section,

.187426.3

underscoring material = new  
~~[bracketed material] = delete~~

1       whichever is lower, if:

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

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

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

22                      G. An employer may make voluntary payments in  
23      addition to the contributions required under the Unemployment  
24      Compensation Law, which shall be credited to the employer's  
25      account in accordance with department rule. The voluntary

.187426.3

underscoring material = new  
~~[bracketed material] = delete~~

1 payments shall be included in the employer's account as of the  
2 employer's most recent computation date if they are made on or  
3 before the following March 1. Voluntary payments when accepted  
4 from an employer shall not be refunded in whole or in part.

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

11 (1) as used in this subsection:

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

17 (b) "predecessor" means the owner and  
18 operator of an employing enterprise immediately prior to the  
19 transfer of such enterprise;

20 (c) "successor" means any person that  
21 acquires an employing enterprise and continues to operate such  
22 business entity;

23 (d) "experience history" means the  
24 experience rating record and reserve account, including the  
25 actual contributions, benefit charges and payroll experience of

.187426.3

1 the employing enterprise;

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

5 (f) "knowingly" means having actual  
6 knowledge of or acting with deliberate ignorance of or reckless  
7 disregard for the prohibition involved; and

8 (g) "violates or attempts to violate"  
9 includes an intent to evade, a misrepresentation or a willful  
10 nondisclosure;

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

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

22 (b) notice of the transfer has been  
23 given in accordance with the rules of the secretary during the  
24 calendar year of the transaction transferring the employing  
25 enterprise or the date of the actual transfer of control and

underscoring material = new  
~~[bracketed material]~~ = delete

1 operation of the employing enterprise;

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

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

22 (3) the applicable experience history may be  
23 transferred to the successor in the case of a partial transfer  
24 of an employing enterprise if the successor has acquired one or  
25 more of the several employing enterprises of a predecessor but

.187426.3



underscoring material = new  
~~[bracketed material] = delete~~

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

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

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

22 (c) files with the application a Form  
23 ES-903A or its equivalent with a schedule of the name and  
24 social security number of and the wages paid to and the  
25 contributions paid for each employee for the three-and-one-

.187426.3

underscoring material = new  
~~[bracketed material] = delete~~

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

17 (4) if, at the time of a transfer of an  
18 employing enterprise in whole or in part, both the predecessor  
19 and the successor are under common ownership, then the  
20 experience history attributable to the transferred business  
21 shall also be transferred to and combined with the experience  
22 history attributable to the successor employer. The rates of  
23 both employers shall be recalculated and made effective  
24 immediately upon the date of the transfer;

25 (5) whenever a person, who is not currently an

.187426.3

underscoring material = new  
~~[bracketed material]~~ = delete

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

12 (a) the cost of acquiring the business;

13 (b) whether the person continued the  
14 business enterprise of the acquired business;

15 (c) how long such business enterprise  
16 was continued; and

17 (d) whether a substantial number of new  
18 employees were hired for performance of duties unrelated to  
19 those that the business activity conducted prior to  
20 acquisition;

21 (6) if, following a transfer of experience  
22 history pursuant to this subsection, the department determines  
23 that a substantial purpose of the transfer of the employing  
24 enterprise was to obtain a reduced liability for contributions,  
25 then the experience rating accounts of the employers involved

.187426.3

underscoring material = new  
~~[bracketed material] = delete~~

1 shall be combined into a single account and a single rate  
2 assigned to the combined account;

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

6 (a) describe how experience history is  
7 to be transferred; and

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

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

.187426.3

underscoring material = new  
~~[bracketed material] = delete~~

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

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

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

19 (1) the total assets in the fund and the total  
20 of the last annual payrolls of all employers subject to  
21 contributions as of the computation date for each year shall be  
22 determined. These annual totals are here called "the fund" and  
23 "total payrolls". For each year, the "reserve" of each  
24 employer shall be fixed by the excess of the employer's total  
25 contributions over total benefit charges computed as a

.187426.3

underscoring material = new  
[bracketed material] = delete

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

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

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

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

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

22 (d) Contribution Schedule 3 of the table  
23 provided in Paragraph (4) of this subsection if the fund equals  
24 less than one and three-tenths percent but not less than one  
25 percent of the total payrolls;

.187426.3

underscoring material = new  
~~[bracketed material] = delete~~

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

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

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

12 (3) as used in this section:

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

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

21 (c) "base-period employers" means the  
22 employers of an individual during the individual's base period;  
23 and

24 (d) "computation date" for each  
25 calendar year means the close of business on June 30 of the

.187426.3

1 preceding calendar year;

2 (4) table of employer reserves and  
3 contribution rate schedules:

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

.187426.3



underscored material = new  
[bracketed material] = delete

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

13 and

14 (5) from January 1, 2011 through December 31,  
15 [~~2011~~] 2013, each employer making contributions pursuant to  
16 this subsection shall make a contribution at the rate  
17 specified in Contribution Schedule 1; provided that, if the  
18 unemployment compensation fund, after receiving the  
19 appropriation provided in Section 4 of this 2011 act, is equal  
20 to or less than fifty million dollars (\$50,000,000), each  
21 employer making contributions pursuant to this subsection  
22 shall make a contribution at the rate specified in  
23 Contribution Schedule 2, beginning at the end of the next  
24 calendar quarter until December 31, 2013.

25 J. The division shall promptly notify each

.187426.3

underscoring material = new  
~~[bracketed material]~~ = delete

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

.187426.3

underscoring material = new  
~~[bracketed material]~~ = delete

1 party to such determination, redetermination or decision, or  
2 to any other proceedings under the Unemployment Compensation  
3 Law in which the character of such services was determined.  
4 The employer shall be promptly notified of the decision on the  
5 employer's application for redetermination, which shall become  
6 final unless, within fifteen days after the mailing of notice  
7 thereof to the employer's last known address or in the absence  
8 of mailing, within fifteen days after the delivery of such  
9 notice, further appeal is initiated pursuant to Subsection D  
10 of Section 51-1-8 NMSA 1978.

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

.187426.3

underscored material = new  
~~[bracketed material] = delete~~

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

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

.187426.3

underscoring material = new  
~~[bracketed material]~~ = delete

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

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

20 N. Any interest required to be paid on advances to  
21 this state's unemployment compensation fund under Title 12 of  
22 the Social Security Act shall be paid in a timely manner as  
23 required under Section 1202 of Title 12 of the Social Security  
24 Act and shall not be paid, directly or indirectly, by the  
25 state from amounts in the state's unemployment compensation

.187426.3

underscored material = new  
[bracketed material] = delete

1 fund."

2 SECTION 2. Section 51-1-25 NMSA 1978 (being Laws 1959,  
3 Chapter 321, Section 5, as amended) is amended to read:

4 "51-1-25. ADVISORY COUNCILS.--

5 A. The secretary shall appoint a "state  
6 unemployment compensation advisory council" composed [~~in each~~  
7 ~~case of men and women and including~~] of an equal number of  
8 employer and employee representatives who are representative  
9 because of their vocation, employment or affiliations and such  
10 members representing the general public as the secretary  
11 designates. The council shall aid the department in  
12 formulating policies and discussing problems relating to the  
13 administration of the Unemployment Compensation Law and in  
14 assuring impartiality and freedom from political influence in  
15 the solution of such problems. The secretary may also appoint  
16 industry or other special councils to perform appropriate  
17 services. [~~Council members shall serve without compensation~~  
18 ~~other than for wage loss sustained for attendance at formal~~  
19 ~~meetings of the council or duly constituted committees.~~  
20 ~~Members shall be reimbursed for any travel expense incurred in~~  
21 ~~the same manner as employees of the department.~~]

22 B. On or before January 13, 2012, the state  
23 unemployment compensation advisory council shall present  
24 recommendations to the legislature for statutory changes to  
25 provide for a permanent solution for the solvency of the

.187426.3

underscored material = new  
[bracketed material] = delete

1 unemployment compensation fund. In preparing the  
2 recommendations, the council shall consider the following  
3 objectives:

4 (1) refining the formula for determining  
5 contribution rate schedules that determine an employer's  
6 contribution to the unemployment compensation fund each  
7 calendar year;

8 (2) reevaluating and restructuring the  
9 contribution rate schedules and the employer experience rating  
10 banding within each contribution rate schedule;

11 (3) adding a ceiling and floor mechanism that  
12 adjusts if the unemployment compensation fund reaches a high  
13 balance or is near insolvency; and

14 (4) determining a target unemployment  
15 compensation fund balance or ratio."

16 SECTION 3. [NEW MATERIAL] CERTIFICATION OF ASSETS IN THE  
17 UNEMPLOYMENT COMPENSATION FUND--EMPLOYER ASSESSMENTS.--

18 A. If, between January 1, 2012 and December 31,  
19 2013, the total assets of the unemployment compensation fund  
20 are less than or equal to fifty million dollars (\$50,000,000),  
21 the secretary of workforce solutions shall, within ten days of  
22 the unemployment compensation fund reaching such amount,  
23 certify to the secretary of finance and administration that  
24 the total assets of the unemployment compensation fund are  
25 equal to or less than fifty million dollars (\$50,000,000).

.187426.3

underscored material = new  
~~[bracketed material] = delete~~

1           B. Upon the transfer of the appropriation from the  
2 legislature pursuant to Section 4 of this act, an assessment  
3 of five-hundredths percent of the base wage upon which  
4 contributions must be paid pursuant to the Unemployment  
5 Compensation Law shall be assessed to each employer making  
6 contributions pursuant to Subsection I of Section 51-1-11 NMSA  
7 1978. Such assessments are separate from and in addition to  
8 the contributions required under the Unemployment Compensation  
9 Law and shall become due and be paid by each employer to the  
10 department for the unemployment compensation fund at the end  
11 of each calendar quarter until such time as the total amount  
12 of the appropriation from the legislature pursuant to Section  
13 4 of this act is returned to the general fund, in accordance  
14 with such regulations as the secretary shall prescribe and  
15 shall not be deducted, in whole or in part, from the wages of  
16 individuals in the employer's employ.

17           **SECTION 4. APPROPRIATION.**--Fifty million dollars  
18 (\$50,000,000) is appropriated from the general fund to the  
19 unemployment compensation fund for expenditure in fiscal years  
20 2012 and 2013 to fund the payment of unemployment compensation  
21 pursuant to the Unemployment Compensation Law. The  
22 appropriation is contingent upon certification by the  
23 secretary of workforce solutions that the total assets of the  
24 unemployment compensation fund are equal to or less than fifty  
25 million dollars (\$50,000,000). Further, the appropriation is

.187426.3



1 contingent upon certification by the secretary of workforce  
2 solutions that the appropriation can be repaid by employer  
3 assessments paid into the unemployment compensation fund  
4 pursuant to Section 3 of this act.

5 SECTION 5. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is January 1, 2012.

7 SECTION 6. EMERGENCY.--It is necessary for the public  
8 peace, health and safety that this act take effect  
9 immediately.

10 - 25 -  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25