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

		ORIGINAL DATE	09/21/11		
SPONSOR	Stewart	**LAST UPDATED**	09/23/11	**HB**	19
SHORT TITLE	Unemployment Benefits and Contributions			**SB**	
				ANALYST	Aledo-Sandoval

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY11	**FY12**	**FY13**		
	$38,800.0	$120,900.0*	Recurring	Unemployment Compensation Fund

(Parenthesis ( ) Indicate Revenue Decreases)
*Assuming employer contribution schedule 5 in CY 2013

Relates to SB29 and HB31

SOURCES OF INFORMATION
LFC Files

Responses Received From
Workforce Solutions Department (WSD)

SUMMARY

Synopsis of Bill

House Bill 19 seeks to repeal Laws 2011, Chapter 184, Sections 1 through 6, and amend Sections 51-1-4, 51-1-5, 51-1-7, 51-1-11 and 51-1-48 NMSA 1978 as they existed prior to the enactment of Laws 2011, Chapter 184, Sections 1 through 6.

HB 19 intents to repeal House Bill 59 (Laws 2011, Chapter 184, Sections 1 through 6) as it was passed by the legislature and partially vetoed by the governor. Thus, the bill seeks to only repeal what happened to HB 59 in the 2011 regular session and not to repeal those sections in their entirety. By doing so, the sections in question revert to how they were in law before HB 59 was passed. It's as if HB 59 never occurred and the rest of the bill amends the pertinent sections anew.

In general, HB 19 proposes to: (1) reduce the number of qualifying dependents eligible to receive the $25 dependent allowance from four to two; (2) eliminate the payment of unemployment benefits to individuals attending school (other than individuals in an approved vocational training institutions program) on a full-time basis unless it is demonstrated that the applicant is able, available, and actively seeking full or part-time work; (3) implement unemployment insurance (UI) Contribution Schedule 3 effective January 1, 2012 through December 31, 2012; and (4) prohibit the calculation or payment of extended benefits under the Unemployment Compensation Act during periods when the WSD determines that the state will not be fully reimbursed by the federal government for all extended benefits paid.

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

FISCAL IMPLICATIONS

HB 19 attempts to address the impending solvency crisis facing the Unemployment Insurance Trust Fund.

Calendar Year Analysis

HB 19 proposes to implement employer contribution schedule 3 on January 1, 2012 through December 31, 2012. Most recent WSD projections estimate a change to schedule 3 in 2012 would increase employer contributions by a projected $84.4 million for calendar year 2012 compared to if it remained at schedule 1. WSD estimates that the average contribution for a change from schedule 1 to schedule 3 would be an additional $166.99 per employee.

CY 2012

(in millions)	Schedule 1	Schedule 3
Est. Total Contributions	$198.9	$283.3

Although each quarter in CY 2012 concludes with a projected positive fund balance, there may be cash flow problems in CY 2012. 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 even with the move to schedule 3 in 2012.

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	3	31.8	64.5	87.4	54.7
2012	Q2	3	114.4	64.5	54.7	104.6
2012	Q3	3	80.1	64.5	104.6	120.2
2012	Q4	3	57.0	64.5	120.2	112.7

With contribution schedule 3 in effect for CY 2012, the WSD projected ending UI trust balance on December 31, 2012 is $112.7 million.

Based on current WSD projections, contribution schedule 3 in CY 2012 will result in total revenues of $283.3 million. Total expenditures for the same period are projected to be $258 million. The projected surplus between contributions and expenditures in CY 2012 is $25.3 million.

Fiscal Year Analysis

In FY12, changing from schedule 1 to schedule 3 only affects the 4th quarter of FY12 because contributions are collected in the quarter after they are assessed. Therefore the proposed change from schedule 1 to schedule 3 on January 1, 2012 is calculated to increase employer contributions by approximately $38.8 million in FY 12.

The employer contribution total for FY 12 under different schedules is shown in the table below.

FY 2012

(in millions)	Schedule 1	Schedule 3
Est. Total Contributions	$202.8	$241.6

Other Fiscal Considerations

HB 19 reinstates the contribution trigger system for calendar years after 2012. 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 3 were in place for calendar year 2012 the June 30, 2012 balance is estimated to be $104.6 million. This fund balance is likely to trigger schedule 5 for 2013.

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 for 2013 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.

HB 19 reenacts the benefit reductions in regard to dependent allowance and full-time student status set forth in HB 59 as passed by the regular session of the 50th Legislature. Those reductions took effect July 1, 2011 and therefore there will be no additional fiscal impact. HB 19 repeals Laws 2011, Chapter 184, Sections 1 through 6 and sets forth the same reductions in order to clarify the legislature's intent and provide certainty in the law regardless of the partial veto before the New Mexico Supreme Court.

SIGNIFICANT ISSUES

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, USDOL 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, 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, 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.

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. As experienced during the first half of 2011, unemployment rates have been on the decrease leading to lower benefits paid than originally projected.

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 Secretary of Workforce Solutions 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 USDOL 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 reprogram its unemployment insurance tax system to implement Contribution Schedule 3, at a cost of approximately $60,000.

Additionally, the Department states it will be required to print and distribute wage and contribution reports to all contributing employers in the state at an approximate cost of $76,000. The Department should be able to cover these costs with federal funding.

Since these functions are performed every year, there is no additional fiscal impact.

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 for 2012. Lack of a schedule in 2012 would impose the federal tax liability on New Mexico contributing employers. That tax liability is 6 percent. WSD estimates the total cost to employers in 2012 in the absence of a state contribution schedule would be $486.2 million.

MCAS/svb

HB 19

							Schedule 1				Schedule 3				Schedule 5*	
	FY10				FY11				FY12				FY13			
	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
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	104.6	120.2	112.7	96.6
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	114.4	80.1	57.0	45.3	143.2
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)
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)	49.9	15.6	(7.5)	(16.1)	81.8
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	104.6	120.2	112.7	96.6	178.4

Notes:
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
Schedule 5 - in CY 2013 as per the stuatory trigger system (June 30, 2012 fund balance)

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.