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

SPONSOR HJC **ORIGINAL DATE** 02/06/13 **LAST UPDATED** 03/08/13 **HB** 325/HJCS

SHORT TITLE Work Share Program for Reducing Hours **SB**

ANALYST Aledo-Sandoval/Daly

STIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$1,136.136		$1,136.136*	Nonrecurring	General Fund
		$471.496	$471.496	$942.992	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

*****Some portion of this amount could be covered by federal grants: as discussed more fully below, New Mexico's maximum share if it had a conforming Short Term Compensation Plan for the full three years of grant availability, would have been $572,119. Only one-third of that amount would have been available for implementation and administration.

SOURCES OF INFORMATION

LFC Files

Responses Received From
Workforce Solutions Department (WSD)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 325 (HB 325) enacts a new section of the Unemployment Compensation Law (UCL) to create a short-time compensation (STC) program. The short time compensation program would allow participating employers to reduce their employees' normal weekly hours in lieu of layoffs.

The bill defines the following terms: "affected unit", "health and retirement benefits", "plan", "program", "short-time compensation", "usual weekly hours of work".

To participate in the program, an employer would be required to submit a signed written plan to the Secretary. The plan must include: 1) identification of the specific affected unit; 2) identification of the employees in the affected unit including social security number; 3) a description of how employees in the affected unit will be notified of the employer's participation in the plan or why such notification is not feasible; 4) identification of the usual weekly hours of

work for the employees in the affected unit and the percentage by which their hours will be reduced (which must be between 10 percent and 60 percent); 5) certification that if the employer provides health and retirement benefits to an employee whose usual weekly hours are reduced under the program, the benefits will continue to be provided under the same terms and conditions; 6) certification that the aggregate reduction in work hours is in lieu of layoffs; 7) agreement by the employer to furnish reports, allow access to all records necessary to approve or disapprove the plan application or to monitor and evaluate the plan, and follow directives deemed necessary to implement the plan; 8) certification that participation in the plan and its implementation is consistent with the employer's obligations under applicable federal and state laws; and 9) any other provision determined appropriate by the USDOL Secretary.

The WSD Secretary must issue a decision in writing within 30 days of receipt of an employer's plan. A decision disapproving a plan must identify the reasons for disapproval and the disapproval is final. An employer is allowed to submit another plan for approval 30 days after the date of the disapproval.

HB 325 details when the plan shall expire and procedures for instances where the WSD Secretary revokes the plan. Employers may request modifications to the plan in writing; however, a modification cannot extend the expiration date of the original plan.

Eligible employees would be allowed to collect unemployment compensation benefits only if the individual is monetarily eligible for unemployment compensation and has not been previously disqualified. Eligible employees would not be required to actively seek work or be able and available for work as required in the normal process for claiming benefits but must be able and available to work additional or full-time hours with the employer. Compensation is calculated by multiplying the regular weekly unemployment compensation amount for a week of total unemployment by the percentage of reduction in the individual's usual weekly hours of work. An individual shall not be paid short-time compensation benefits for more than 52 weeks. In instances where individuals work for both a short-time compensation employer and another employer, if combined hours do not result in a reduction of at least 10 percent of the usual weekly hours of work with the short-time employer, the employee is not entitled to short-time compensation benefits. Also if the combined hours of work for both employers results in a reduction equal to or greater than 10 percent of the usual weekly hours of work for the short-time compensation employer, the benefit amount is reduced and determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced by 10 percent or more of the individual's usual weekly hours of work. An individual who worked the reduced percentage for the short-term employer, was available for all usual hours of work with that employer, and did not work any hours for the other employer (either due to lack of work or excusal from work) is eligible for short-term compensation for that week. An individual who is not provided any work by the short-term compensation employer but who works for another employer may be paid unemployment compensation subject to the disqualifying income and other applicable provisions. An otherwise eligible individual, if not provided any work by either the short-term compensation employer or any other employer, shall be eligible for the amount of regular unemployment compensation.

Short-term compensation shall be charged to contributing employers in the same manner as under the UCL. Employers liable for payments in lieu of contributions shall have short-term compensation attributed to service in their employ the same way unemployment compensation is

attributed. Contributing and reimbursable employers are relieved of any short-term compensation benefits charges if those benefits are subject to one hundred percent reimbursement from the federal government.

An individual who has received all short-term compensation, either separately or in combination with unemployment compensation available in a benefit years shall be considered an exhaustee and eligible to receive extended benefits, if otherwise eligible under applicable provisions.

If the U.S. secretary of labor determines that a provision of this section does not comply with federal law or regulation, the remainder of this section or its application to other situations or persons shall not be affected.

FISCAL IMPLICATIONS

The WSD has advised that HB 325 does not provide for start-up costs for the Department to develop the STC Program or for recurring costs to implement and maintain the program. System changes would be required to the new UI claims/tax system which was implemented in January 2013. This would require a new contract with the original contractor. Preliminary estimates are that it will take five FTEs (developers) to work with the contractor for five months to design and test the new program. The STC program will also require substantial changes to the WSD business rules and will require additional FTEs to implement and maintain the program. If this program meets all federal requirements for a Short Time Compensation program, then some limited federal funds would be available to cover these start-up costs. The maximum amounts available to New Mexico would be approximately $190,700, so a large portion of the start-up and then recurring operation costs would have to be paid from the General Fund.

uFACTS System Changes – Non-Recurring

Source	**Item**	**Amount**
DWS IT	IT Apps Dev 3 (5 FTE for 5 months)	$193,190
Deloitte	Design, Development, Testing	$900,000
22.23%	Indirect Rate	$42,946
TOTAL		**$1,136,136**

Program Costs - Recurring

Source	**Item**	**Amount**
Supervisor (1)	Work Share Plan Supervisor	$64,327
Office Clerk (1)	Plan Processor	$34,992
Mgt. Analyst (6)	Plan Evaluator and Plan Auditors	$286,671
22.23%	Indirect Rate	$85,506
TOTAL		**$471,496**

The WSD provides this further explanation of the fiscal impact of HB 325:

> **Temporary Reimbursement of Eligible STC Costs Paid Under State Law**
>
> Federal reimbursement of a substantial portion of STC benefits is available for up to 156 weeks to states whose STC laws conform to the definition in 26 U.S.C.

3306(v), as more fully described below. Such reimbursements are only available for weeks of unemployment beginning after the date of the enactment of the STC program. To qualify for reimbursement of STC costs paid under state law, the state's STC provisions are not required to be permanent. Also, any reimbursements for STC costs are only available until the week of unemployment ending on August 22, 2015. For any amounts reimbursed by the federal government, a state may choose not to charge a contributing employer's account and not to require reimbursement from reimbursable employers. HB 325 allows for relief to contributing and reimbursable employers for those STC benefits that are subject to one hundred percent reimbursement. After the reimbursement ends, contributing employers' accounts will be charged for STC benefits, and reimbursable employers will have to pay the STC benefits as usual. Further, after the reimbursement ends, any STC benefits will have to be paid out of the state's unemployment compensation trust fund.

Further, under federal law, there are certain limitations on the reimbursement of STC costs. Specifically, no payments will be made for STC benefits paid to an individual during a benefit year in excess of 26 times the weekly benefit amount (including dependents' allowances). Additionally, no payments will be made for benefits paid to an individual if the individual is employed by the participating employer on a seasonal, temporary, or intermittent basis. Furthermore, although the United Stated Department of Labor has not issued final guidance, it has stated that sequestration will result in an approximate 5.1% reduction in reimbursements.

Availability of and Criteria for Grants for State STC Programs

Under the February 2012 federal law regarding STC programs, a total of 100 million dollars is available to states for grants for the implementation or improved administration of an STC program, or for promotion and enrollment of employers in an STC program. A state's share will be determined using the same ratio as would apply under a Reed Act distribution that would have been made October 1, 2010, under § 903(a)(2)(B) of the Social Security Act. The maximum amount available to New Mexico would be $572,119.00.

The federal law breaks down how this money must be spent and accounted for, if a state receives the grant. One-third of a state's share is available for implementation or improved administration of an STC program. Thus, only $190,706.00 would be available to New Mexico for implementing and administering the program. The remaining $381,413.00 is only available for the promotion and enrollment of employers in the STC program. The deadline to apply for such a grant is December 31, 2014. Additionally, to qualify for the grant, the state's STC program may not have an expiration date HB 325 does not have an expiration date). Further, the program must be scheduled to take effect within 12 months of USDOL's certification that the law provisions meet the requirements for the grant. USDOL will recoup any grant awarded to a state if, during the five-year period after the award, the state either terminates its STC program or otherwise fails to meet the federal STC requirements.

Although $190,706.00 is potentially available for the implementation and administration of the program, this amount falls far below the estimated $1,136,136.00 required to implement the program.

Furthermore, if the state's STC program fails to conform to federal law, any STC benefits may not be paid out by the state's unemployment compensation trust fund. Instead, such benefits would have to be paid out of the state's General Fund.

SIGNIFICANT ISSUES

The WSD advises:

HB 325 will have significant impact from both a claimant and an employer perspective. From a claimant's perspective, the substitute bill expands upon already existing opportunities to collect unemployment benefits. The substitute does not replace partial benefits, but instead offers a new type of unemployment benefit available to claimants who work for a participating employer. Whether or not any Work Share or STC Program exists, workers in New Mexico currently have the chance at making a claim for partial benefits if their hours are reduced to the point where they are no longer full-time and do not make more than their maximum weekly benefit amount. HB 325 would qualify even more workers for unemployment benefits. Under the STC Plan, eligible workers with reduced employment would receive a prorated share of their weekly benefit amount that corresponds to the percentage reduction in hours they experience. In contrast to current law, employees of a business participating in the STC Program would *not* be barred from receiving benefits if, after a reduction in employment, they continued to make more than their weekly benefit allowance. Rather, they would receive a *pro rata* share of their weekly benefit amount based on the percentage of reduction in hours they experience. As a result, more people will be collecting unemployment insurance unless employers choose not to participate in the STC Program. These expanded benefits could put a strain on the current unemployment insurance trust fund – particularly after the federal reimbursements expire in August 2015. All STC benefits from that point forward would be borne by New Mexico's Trust Fund as long as New Mexico's program continued to conform to federal law. If New Mexico's program does not conform to federal law, then, as stated above, the STC benefits cannot be paid out of the Trust Fund. Rather, they would have to be appropriated from the General Fund.

From the employers' perspective, the STC Program imposes significant administrative burdens on employers, impacts their unemployment insurance charges (because the increased unemployment insurance claims made pursuant to HB 325 would be charged against the employers' account), and restricts their business practices. For example, participating businesses must submit a detailed plan outlining their proposed program and various reports to the Department. Additionally, participating employers must agree not to diminish certain health or retirement benefits for the duration of the plan, nor to employ additional workers in the affected unit except to replace an employee that leaves voluntarily or until the employer has restored the normal weekly work hours of each affected

employee. Such requirements substantially limit a participating employers' flexibility in its business practices and entail more administrative costs. Moreover, as stated above, employers will see their unemployment insurance accounts charged for the additional pay outs in benefits contemplated in /HB 325. The substitute creates no incentives for any business to take on the burdens and costs that participation in the STC Program would entail. If participation in the program would be low, questions might arise as to whether the significant costs to the Department to administer the program are justified.

As discussed in more detail above, issues that impact the Department include: 1) the time required to promulgate rules and regulations for the employer, employee, and the agency; 2) the creation of forms required for the employer and the employee; and 3) the acquisition of FTEs to initiate and execute the program.

ADMINISTRATIVE IMPLICATIONS

The WSD reports that the proposed STC program will place additional administrative requirements on employers and the Department. Initially, the Department will need to set up a mechanism to notify the employers of the new program and its requirements. On an ongoing basis, it is estimated that implementing the work share program will require a unit consisting of 8 FTEs. One FTE Supervisor would be necessary to provide guidance and support for the group processing and overseeing the STC process. One FTE office clerk would work directly with employers to process requests for work share plans and ensure that the plans comply with the work share requirements. Six FTEs would be required to audit established work share plans to ensure that the employers meet all of the requirements listed above and conduct their plans accordingly.

Additionally, the WSD notes that most of its IT staff that would be required to perform the activities related to this new program are currently assigned to the new tax and claims system that was implemented January 1, 2013.

Additionally, the Department would be required to initiate a contract amendment with the current vendor that would reflect the change in scope and the additional costs required to implement the work share functionality. Further, because the potential reimbursements for STC costs are temporary, the system will have to be altered again after the reimbursement period ends to charge contributing employers and require reimbursement from reimbursable employers. Also, the reporting requirements established by USDOL will require additional changes to the system.

OTHER SUBSTANTIVE ISSUES

The WSD notes that HB 325 expands upon already existing provisions under which individuals may claim partial unemployment benefits. *See* NMAC § 11.3.300.309.

POSSIBLE QUESTIONS

Should there be a limit on the hourly wage? As written now, it appears a work unit with $50 per hour employees would be just as eligible a work unit with $8.00 per hour employees but obviously the level of need for the employee may be different.

Would this really be a useful tool for employers since it seems to just increase their costs if a legitimate reduction is force is anticipated?

MAS:MD/svb