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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13
LAST UPDATED 03/14/13

SPONSOR Brown **HB** 329/aHLC/aSPAC/aSJC
SHORT TITLE Recovery of Certain Unemployment Benefits **SB** _____
ANALYST Aledo-Sandoval

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	TBD*	TBD*	Recurring	Unemployment Insurance Trust Fund and Unemployment Security Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$3.7	\$0.0	\$0.0		Nonrecurring	Federal Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Workforce Solutions Department (WSD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to House Bill 329 as twice amended, stipulates that an employing unit or their officer or agent *may* be charged with separate offenses for willful violation of the Unemployment Compensation Law or any rules or regulations thereunder.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to House Bill 329 strikes the HLC amendment and imposes civil penalties not to exceed \$10 thousand dollars on employers for fraudulently preventing or reducing the payment of benefits. Civil penalties collected from employers due to fraud will be deposited into the unemployment compensation administration fund.

Synopsis of HLC Amendment

The House Labor and Human Resources Committee amendment to House Bill 329 makes a minor technical change to clarify that the employment security department fund was created pursuant to Section 51-1-34 B, NMSA 1978.

Synopsis of Original Bill

House Bill 329 (HB 329) amends the Unemployment Compensation Act by removing the double affirmation clause and imposing a civil penalty of twenty-five percent of the amount of overpaid benefits determined to have been paid due to fraud. The double affirmation clause prevents the WSD from collecting overpayments in situations where a claimant has received benefits through a decision which is subsequently affirmed twice by the WSD or by a court decision, even after a final decision finds a claimant was ineligible for benefits. This bill would allow the WSD to cut off benefits and pursue recoupment of benefits already paid in the case where a final decision finds a claimant was ineligible for benefits and no further appeals are available.

Civil penalties collected due to fraud will be divided as follows: 15 percent into the unemployment insurance trust fund and 10 percent into the unemployment security fund. The civil penalty provided in HB 329 is in addition to the already existing criminal fines and the requirement that all benefits received due to fraud be repaid.

FISCAL IMPLICATIONS

In regards to the double affirmation rule, currently, in situations where a claimant is initially cleared for benefits but ultimately found to be ineligible for benefits, the WSD is unable to recoup the overpayment of benefits from the claimant and charges are not imposed on the employer's account. In these situations, the unemployment insurance trust fund socializes the overpayment costs. The WSD did not provide an estimate of the fiscal impact to the unemployment insurance trust fund caused by the double affirmation rule.

In regards to the civil penalty for overpayment due to fraud, according to the WSD, during calendar years 2010 – 2012, there was approximately 7,600 fraud overpayment cases established, which resulted in an estimated \$18.4 million in fraud overpayments for the same time period. If this HB 329's civil penalty had existed for the same time period, claimants overpaid due to fraud would be collectively liable for an additional \$4.6 million.

As of January 2, 2013, the unemployment insurance trust fund balance was \$51.5 million.

The WSD states that amounts collected of the federally-mandated penalty must be reported to the federal government. The current IT system does not include a function whereby the 15 percent penalty may be tracked. It is estimated that about eight hours of code changes will be necessary

to ensure the federal reporting requirements are met. Additionally, IT staff will have to spend about 12 hours testing the code changes. Code changes would also be necessary to stop recovery of overpayment penalties from reductions of future unemployment benefits. Penalties must be paid in cash, whereas the overpayment amount itself could be repaid in cash or by reductions in unemployment benefits from future claims. It is estimated that the code changes to stop future benefit reductions for the penalty amount will take about 16 hours of programming labor. Estimated cost for changes to implement HB 329 is a one-time development cost of approximately \$3.7 thousand.

SIGNIFICANT ISSUES

The WSD notes that the majority of states have already removed the double affirmation rule from their unemployment compensation laws. Currently, the WSD is prohibited from recovering the benefits paid to the claimant in situations, where a claimant has received benefits through a decision which is subsequently affirmed twice by the WSD or by a court decision even if the determination is later reversed by the WSD or judicial action.

According to the WSD, this rule creates a legal fiction whereby a claimant who is ultimately found to be disqualified or ineligible for benefits receives benefits but is not required to pay them back. HB 329, as drafted, allows the Department to recover overpayments from claimants that are ultimately determined to be ineligible or disqualified from unemployment benefits.

The WSD provided the additional background information:

In general, “double affirmation” rules were enacted to ensure prompt payment of benefits to claimants during their time of need. In 1971, however, the United States Supreme Court held that while an employer appeal is pending, states must continue paying benefits as long as all other eligibility requirements are met. *See Cal. Dep’t. of Human Res. v. Java*, 402 U.S. 121, 133 (1971). Thus, there is no longer a need for the double affirmation rule because Section 303(a)(1), SSA, and the *Java* case require that the Department pay benefits until the appeal process is exhausted when a claimant is initially cleared for benefits.

The WSD is required by the United States Department of Labor (USDOL), through the Trade Adjustment Assistance Extension Act of 2011 to impose a monetary penalty on claimants whose fraudulent acts result in overpayments. As a condition of receiving a federal grant to administer its unemployment compensation law, a state that has determined an improper payment was made to an individual due to fraud must assess a monetary penalty of not less than 15 percent of the amount of the overpayment against the individual. According to the WSD, although 15 percent is the minimum amount required, states may impose a greater penalty.

Federal law requires states to deposit receipts of the federally-mandated penalty amounts in the unemployment insurance trust fund of the state and limits the use of these funds primarily to the payment of unemployment insurance benefits.

The WSD states that penalty amounts in excess of the federally-mandated 15 percent may be deposited in a fund of the State’s choosing. HB 329 proposes to levy a penalty that exceeds the federal minimum by 10 percent.

PERFORMANCE IMPLICATIONS

According to the WSD, removing the double affirmation rule would result in claimants who receive benefits and are later found ineligible to be treated equally regardless of the procedural posture of their case.

ADMINISTRATIVE IMPLICATIONS

The AOC states that there is no indication that improperly paid compensation benefits are a significant issue for the judiciary.

RELATIONSHIP

HB 329 and SB 334 both seek to amend different sections of the Unemployment Compensation Act.

OTHER SUBSTANTIVE ISSUES

The WSD states that when any recovery is made with respect to a fraudulent overpayment, USDOL encourages states to apply recovery to the principal amount of the overpayment first, then to the federally-mandated penalty amount, and finally to the additional penalty amount. The order of the recovery, however, is to be determined by state law.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the WSD, if this bill is not enacted, the state will be in violation of the federal Trade Adjustment Assistance Extension Act of 2011. Due to that violation, USDOL could find that the state's unemployment compensation program is not in conformity with federal law. Because the penalty on claimants committing fraud in connection with unemployment compensation programs is a condition of receiving a federal grant to administer its unemployment compensation law, New Mexico could lose the money provided by the federal government to administer the unemployment compensation program for the citizens of New Mexico.

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