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

SPONSOR HJC **DATE TYPED** 3/16/2005 **HB** 520/HJCS/aSFL#1

SHORT TITLE Unemployment Experience History Transfers **SB**

ANALYST Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			$0.1		General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 476.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Labor (DOL)
Attorney General (AG)
NM Department of Corrections (NMDC)

SUMMARY

Synopsis of SFL Amendment #1

The Senate Floor Amendment # 1 of HJC substitute of House Bill 520 prohibits denial of Unemployment Insurance Benefits for a person who voluntarily left work because a spouse who is in the United States Military or New Mexico National Guard received permanent change of station orders, activation orders, or unit deployment orders.

The bill modifies the current Unemployment Insurance (UI) structure and would increase the availability of benefits to those individuals who are not currently eligible for benefits. The proposed amendment would make eligible for UI benefits certain workers who voluntarily quit their employment to follow a military spouse who has been transferred to a new location. This change does not contradict federal law.

DVS notes that if a member of the military receives orders to transfer, the spouse has to quit, not by choice of their own. This sometimes causes undue hardship with the loss of income until such time as the spouse can find employment at a new location. This bill would allow for an income stream until the spouse is re-employed.

The DOL projects the additional costs to the UI Trust fund will be approximately $400 thousand per year. The fund currently has a balance of $572 million dollars. Senate Bill 920 proposes a similar change in law as incorporated by this amendment.

Synopsis of Original Bill

The House Judiciary Committee substitute for House Bill 520 makes changes to rules governing contributions to the unemployment compensation fund when employers buy, sell or otherwise transfer business. There are civil and criminal penalties, imposed for violation of the rules. The substitution bill incorporates the changes that were included in HB 9 that was passed by the current legislature with and emergency clause and signed into law by the governor. Specifically, the legislation eliminated the benefit denial for claimants attending school full-time, included a dependents' allowance of $15, added eligibility for victims of domestic violence, allowed for benefits to workers seeking part-time work, reduced the new employer tax rate to 2 percent, allowed for the transfer of favorable employment history from other states, and provided a zero tax rate for employers with experience.
The substitute bill modifications track the changes made to Senate Bill 476 substitute.

Significant Issues

Unemployment compensation rates are based in part on benefits that have been charged against employer accounts. This bill tightens procedures for the calculation of rates following the transfer of an employing enterprise and provides civil and criminal penalties for transferring an employing enterprise for the primary purpose of obtaining a reduced contribution rate. The bill prevents employers from transferring employees to a company with a lower rate for the sole purpose of receiving a lower rate.

By amending the statutes, state law will conform with the requirements of federal legislation enacted by Public Law (P.L.) No 108-295, the SUTA Dumping Prevention Act of 2004. In not conforming with the federal law, it may prevent the state from receiving administrative grants from the UC program and may jeopardize state SUTA tax credits to employers.

The Labor Department calculates employer contribution rates based upon the employer's actual experience in making contributions, payroll, the condition of the unemployment compensation fund, and actual unemployment compensation benefit payments to former employees charged to their accounts. Employers must maintain a "reserve" within the fund which is considered when determining annual rates. Employers may also make voluntary contributions to the fund in order to reduce their rates. Presumably employers who have been in business for some time will be charged lower rates, given their contribution history and reserve maintenance.

Current law provides for rate calculations in situations involving business transfers, mergers, and consolidations. It appears that it is beneficial to the successor business to have the previous employer's contribution and benefits history transferred, since the rates based upon that history in

most cases will be lower than the "new employer rate". In the case of business acquisitions, current law provides generally that the contribution, payroll, and benefits payments history is transferred to the successor employer.

This bill would address situations where the predecessor business and the successor business are under "common ownership" at the time of the transfer. That term is defined in the bill to include two or more businesses under substantially the same ownership, management, or control of the same persons. The bill provides that upon such transfer, the employment experience of the two businesses is *combined* for the purpose of setting rates. Current law does not appear to address situations involving transfers of businesses under "common ownership.

The bill also addresses situations where businesses are transferred for the purpose of avoiding higher contribution rates. This may occur when a business is transferred in name only, and the new owner has no intention of continuing to operate the business acquired. In those situations, the bill provides that the previous employer's contribution and benefit history is *not* transferred and the new employer is charged the higher "new employer rate". The Labor Secretary can consider factors such as the price paid for the business; whether the person acquiring the business continued the business enterprise of the acquired business and if so for how long; and whether new employees were hired to perform duties unrelated to the acquired business. Persons involved in sham transfers for the purpose of avoiding higher unemployment contributions are subject to misdemeanor criminal penalties, civil penalties, and the new employer is charged the highest contribution rate.

PERFORMANCE IMPLICATIONS

DOL Department Tax Representatives will begin detecting this type of activity in addition to current duties.

FISCAL IMPLICATIONS

The bill imposes civil penalties of $1,500 to $3,000 for violations of the act.

ADMINISTRATIVE IMPLICATIONS

The Department will implement SUTA dumping software to detect suspicious SUTA dumping activity. This is the automated detection program provided by USDOL. Modification to the NMDOL TACS system will be required to properly assess penalties.

DUPLICATION

Duplicates SB 476.

TECHNICAL ISSUES

The AG notes that the bill also amends Section 51-1-11 NMSA to add the statement that "An employing enterprise includes the employer's workforce" to the definition of "employing enterprise". The term "employing enterprise" is used throughout the Act in lieu of "business". The meaning of this amendment is unclear. It could be construed to require that the *entire* workforce be transferred in order to transfer the contribution or benefits experience. Or it could mean that

only a portion of the workforce must be transferred in order to transfer that experience.

The language regarding an employer's workforce on lines 3-4 page 7 should be clarified as to its intended meaning.

BD/njw:sb:lg