LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: SB 32 **50th Legislature, 2nd Session, 2012**

Tracking Number: .188106.1

Short Title: Temporary Unemployment Fund Contributions

Sponsor(s): Senators John Arthur Smith and Timothy Z. Jennings

Analyst: David Craig **Date: January 31, 2012**

Bill Summary:

SB 32 raises the contribution schedule to Schedule 2 from Schedule 1 for one year. SB 32 also allows the Secretary of Workforce Solutions Department (WSD) to raise the contribution rate to Schedule 3 if as of June 30, 2012 the total assets of the unemployment compensation fund are less than or equal to 30 percent of the total amount of benefits paid in calendar year 2011.

Fiscal Impact:

SB 32 does not contain an appropriation.

According to the Attorney General's bill analysis SB 32 will decrease employer contributions to the unemployment compensation fund compared to current law.

According to WSD SB 32 proposes:

- Using Schedule 1 for calendar year 2012, and Schedule 2 or Schedule 3, depending on certain contingencies, for calendar year 2013.

- Total estimated[1] contributions under Schedule 3, the schedule in place under current law, would be $308.5 million for calendar year 2012. Under SB 32 the contribution schedule could be increased to Schedule 3 if the unemployment compensation fund for calendar year 2013 is less than or equal to 30 percent of benefits paid in calendar year 2011.

- Using the proposed Schedule 1 for calendar year 2012, estimated contributions would be $227.1 million.

- If, under SB 32 this change to Schedule 1 is implemented for calendar year 2012, estimated contributions under Schedule 2 would be $235.5 million for calendar year 2013.

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[1] Projections for contributions are based on historical trends, and a forecast using unemployment rates of 6.8 percent for 2012 and 7.0 percent for 2013.

- If, under SB 32 this change to Schedule 1 is implemented for calendar year 2012, estimated contributions under Schedule 3, would be $297.3 million for calendar year 2013.

According to WSD the trust fund balance is $79.5 million. Under current law, with Schedule 3 in effect for calendar year 2012, the projected trust fund balance at the end of calendar year 2012 is $141 million. Under the scenario of SB 32 that moves to a Schedule 1 for calendar year 2012, the projected balance at the end of calendar year 2012 is $59.6 million.

According to WSD with Schedule 1 in effect for calendar year 2012, two scenarios can occur for calendar year 2013. If Schedule 2 applied for calendar year 2013, then the projected trust fund balance at the end of calendar year 2013 is $41.3 million. Using Schedule 3 for calendar year 2013, the projected fund balance is $103.6 million at the year-end of calendar.

According to the LFC, moving to Schedule 1 for calendar year 2012 and Schedule 2 for calendar year 2013 may require a transfer from the general fund or a short term financing mechanism to avoid any possible cash flow problems and borrowing from the federal government.

According to the LFC and WSD the proposed legislation will require the Department to reprogram its legacy unemployment insurance tax system and the newly designed uFACTS system to be able to implement Contribution Schedule 1 for calendar year 2012 at a cost of approximately $95,000. Additionally, WSD says it will be required to reprint and distribute wage and contribution reports to all contributing employers in the state at an approximate cost of $83,000 and WSD says it should be able to cover these costs with federal funding.

Substantive Issues:

During the 2011 interim, the Legislative Education Study Committee (LESC) heard testimony about the impact that Unemployment Insurance compensation assessments that general services department (GSD) delivers have on public schools. Adjustments to contribution schedules may result in the need for GSD to update its assessment of governmental budgets including public schools. Testimony to the LESC included the following summarized issues:

- Statewide unemployment compensation of former public school employees has increased substantially.

- The State and Local Public Body Unemployment Compensation (UC) Funds account for the administration of all contributions collected and payments made to former employees. The state is eligible to be a reimbursable employer and if an agency or a district has no unemployment claims, the UC expense would be zero.

- As districts let staff go, they should prepare for increased UC expenses. Some districts anticipated this increase and budgeted sufficient resources for the increase.

- As illustrated in Table 1 below GSD assessments for State and Local Public Bodies have not always accurately projected claims expenses. Table 1 below shows UC assessments and claims expenses for FY 08 through FY 13.

TABLE 1: STATE AND LOCAL PUBLIC BODY UNEMPLOYMENT COMPENSATION FUNDS (in millions)		
Year	**Assessments**	**Claims Expenses**
FY08	$12.8	$14.6
FY09	$10.9	$6.8
FY10	$8.6	$11.0
FY11	$6.5	$15.0
FY12	$24.8	$9.7
FY13	$19.6	$19.2
		Source: LFC

Background:

WSD says "SB 32 vests considerable discretion in the Executive Branch, namely the Secretary and the Governor, to move to a UI Contribution Schedule 3 if the circumstances of the UI Trust Fund are less than or equal to thirty percent of the total amount of benefits paid to claimants in CY11." WSD says if SB 32 grants broad discretion to raise payroll taxes to a Contribution Schedule 3 to the Executive Branch than this raises a potential constitutional issue involving separation of powers of the respective branches of government. However, WSD also says that retroactive civil legislation does not raise constitutional questions on account of its retroactivity, if the legislative intent of retroactivity is expressly stated.

According to the statute on Unemployment Insurance,[2] "the risk management division of the general services department annually on or before April 15 shall prescribe schedules of minimum rates per employee to be budgeted by governmental entities for the succeeding fiscal year. Rate schedules prescribed by the risk management division shall take into account the prior experience of the governmental entity, the amount of reserves the governmental entity has on deposit with the Department of Finance and Administration or in a separate account earmarked for the payment of unemployment compensation claims and, if the governmental entity participates in the state government unemployment compensation reserve fund or the local public body unemployment compensation reserve fund, the balance in the fund." Public schools are considered local public bodies and therefore may participate in either contributions to the unemployment compensation reserve fund or state and local public body unemployment compensation reserve fund, or elect payments in lieu of contributions similar to non-profit organizations.

Related Bills:

HB 194 *Unemployment Compensation Fund Contributions*

[2] 51-1-17 (B) NMSA 1978