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

		ORIGINAL DATE	6/19/2020		
SPONSOR	Sanchez	**LAST UPDATED**		**HB**	
SHORT TITLE	Unemployment Calculation Changes			**SB**	13
				ANALYST	Bachechi

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
See Fiscal Implications	See Fiscal Implications			Unemployment Trust Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Senate Bill 13 is a duplicate of House Bill 14.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Workforce Solutions (DWS)

SUMMARY

Synopsis of Bill

Senate Bill 13 would amend Section 51-1-11 NMSA relating to the calculation of employer contributions to the unemployment compensation trust fund. The bill proposes adding a new section "Q" that omits employer's unemployment claims data for January 1, 2020 through December 31, 2021. The bill would require the use of the 2019 computation date reserve factor from January 1, 2020 through December 31, 2021, in calculating employer's tax rates.

SIGNIFICANT ISSUES

New Mexico employers are required to pay into the unemployment compensation trust fund based on a number of factors. For new employers with less than 2 years' experience with the unemployment insurance program, the rate paid is the greater of their industry average unemployment insurance contribution rate or 1 percent. Industry classifications for contributory, experienced employers are used to determine the average industry rates of new employers. After two years, an employer becomes "experience-rated" and their tax rate is based on a "benefit ratio." The benefit ratio is measured by dividing the employer's claims experience over the previous three years by the employer's taxable payroll over the same time period. The resulting benefit ratio is then multiplied by a "reserve factor," which is determined by a formula based on the solvency of the unemployment insurance trust fund every year. The "reserve factor" can be as low as 0.5 and as high as 4.0. For calendar year 2019, the reserve factor was 1.5955.

The use of an "experience rating" means that employers who have laid off workers over the past three years pay higher unemployment insurance taxes than those firms that have not. Experience rating discourages layoffs by making them more expensive and places the burden of unemployment insurance taxes on the firms most likely to conduct layoffs. In normal economies, experience rating can help reduce unemployment.

As a result of the COVID-19 public health emergency and stay at home orders, employers all over the state laid off workers resulting in an extraordinary surge in unemployment claims since mid-march, and as a result, New Mexico's unemployment compensation trust fund is projected to be insolvent by September 2020. Currently, the Department of Workforce Solutions (DWS) is projecting a reserve factor for FY21 of 4.00.

Per guidance from the federal government, DWS is currently not charging employers for separations related to COVID-19 as of March 16th. This experience history will not be included in the calculation for the 2021 tax rates. The only impacting factor for the 2021 tax calculations would be the reserve factor based upon trust fund solvency.

In the event New Mexico's unemployment trust fund depletes its balances, DWS can apply under Title XII of the Social Security Act for a zero interest loan from the Department of Labor to stand up the fund until it can be replenished through employer contributions. However, funds borrowed from the federal government would be interest free for only two years. Any remaining loan balance would be subject to interest and would effectively increase the unemployment tax rate.

The provisions of the bill would keep employer's unemployment tax rates stable through the end of 2021, but with the proposed lower rates, it would take longer to replenish declining balances in the unemployment compensation trust fund. The Department of Workforce Solutions' analysis concludes that the proposed legislation would keep the unemployment tax rates for employers artificially low until tax year 2025, resulting in insufficient revenues to adequately restore the balance in the unemployment compensation trust fund to a healthy level for paying both future benefits and any outstanding loans.

If the solvency loan from the Department of Labor cannot be paid back within two years, DWS projects that in 2025, rates could be higher than the rates for 2021 without this proposed amendment. The Federal Unemployment Insurance Tax Act (FUTA), Sections 3302(c)(2) and 3302(d)(3), provides that employers in states that have an outstanding balance of advances under Title XII of the Social Security Act at the beginning of January 1 of two or more consecutive years are subject to a reduction in credits otherwise available under the Federal Unemployment Tax Act. The FUTA tax rate is currently 6.2% for the first $7,000 of payroll per employee. However, when a state's trust fund is in a healthy position, there is a 5.6% credit given for employers making the actual rate 0.6%. If funding borrowed from the federal government cannot be paid back in a two-year timeframe, the FUTA tax rate could increase by 5.6 %. However, in light of the public health crisis, many state's unemployment trust funds will be insolvent before the end of the fiscal year, and there is the possibility that the federal government will provide relief to states that could change the current rules regarding the FUTA tax rates and credits, providing more time for states to repay trust funds loans without penalty.

TECHNICAL ISSUES

The unemployment insurance tax and claims system would have to be modified to omit the data from January 1, 2020 to December 31, 2021 when calculating tax rates. The tax rate calculation process is complex and runs the risk of introducing errors for downstream processes such as reporting and employers' experience history transfers.

ALTERNATIVES

DWS recommends not passing this legislation during the current legislative session. Instead, the department proposes to start a working group that will include the New Mexico Tax Foundation, CPA Society members, business groups, governor's staff, and legislative representatives that can examine the situation thoroughly and propose solutions in the January 2021 legislative session.

Though tax rates are scheduled to increase Jan 1, 2021, rates are paid on a quarterly basis so payments will not be due until after April 1. The DWS secretary has the flexibility to hold the calculation of rates and would propose to do so until any legislation would pass the 2021 session.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB14 is a duplicate bill.

CB/al/rl