SB 22-066

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 22-0500	**Date:**	February 1, 2022
Prime Sponsors:	Sen. Woodward Rep. Van Winkle	**Bill Status:**	Senate SVMA
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Bill Topic: **RESTORE UNEMPLOYMENT INSURANCE FUND BALANCE**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☒ State Transfer
☒ TABOR Refund
☒ Local Government
☒ Statutory Public Entity

This bill requires the State Treasurer to transfer $1.1 billion from the General Fund to the Unemployment Compensation Fund and directs the Division of Unemployment Insurance to repay the federal government for $1.014 billion in advances received due to depletion of the fund during the COVID-19 pandemic. It will increase state expenditures in FY 2022-23 and reduce state revenue and expenditures and local government expenditures in the future.

Appropriation Summary: No appropriation is required. The state's unemployment insurance program is an enterprise under TABOR, and funds in the Unemployment Compensation Fund are continuously appropriated to the Division of Unemployment Insurance.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 22-066

		FY 2022-23 Budget Year	FY 2023-24 Out Year	FY 2024-25 Out Year
Revenue	Unemployment Compensation Fund	-	($120.8 million)	($489.3 million)
Expenditures	Unemployment Compensation Fund	$1.014 billion	-	-
Transfers	General Fund	($1.1 billion)	-	-
	Unemployment Compensation Fund	$1.1 billion	-	-
	Net Transfer	**$0**	**-**	**-**
Other Budget Impacts	TABOR Refund[1]	$2.2 billion	$1.5 billion	-

[1] *Conditional upon the Unemployment Compensation Fund's loss of enterprise status*

Summary of Legislation

This bill requires the State Treasurer to transfer $1.1 billion from the General Fund to the Unemployment (UI) Compensation Fund on July 1, 2022. The bill requires the Division of Unemployment Insurance in the Department of Labor and Employment to repay the federal government $1.014 billion in advances received due to depletion of the fund during the COVID-19 pandemic.

Background

The Colorado UI program provides temporary and partial wage replacement to workers who have become unemployed through no fault of their own. UI benefits are paid from the Unemployment Compensation Fund, which is funded through premium and surcharge rates charged to employers on the first $17,000 of each covered employee's wages each year.

The balance in the Unemployment Compensation Fund on June 30 determines the premium rate schedule and solvency surcharge for the following calendar year. When the fund balance is low or in deficit, premium rates increase. An additional solvency surcharge is triggered when the fund balance drops below 0.5 percent of total annual private wages, although this surcharge is suspended for 2021 and 2022 under Senate Bill 20-207. The fund balance must reach 0.7 percent to end the solvency surcharge.

As a result of high levels of unemployment and an unprecedented increase in benefits paid during the COVID-19 pandemic, the Unemployment Compensation Fund became insolvent on August 18, 2020, and has remained insolvent, triggering a move to the highest rate schedule beginning January 1, 2022. When the Unemployment Compensation Fund balance falls below zero, the federal government requires that another revenue source be found to continue funding the UI program. Colorado began borrowing from the Federal Unemployment Account (FUA) to fund benefits payments in August 2020. As of January 14, 2022, Colorado has an outstanding federal loan balance of $1.014 billion.

FUA loans were extended interest-free until September 6, 2021, at 2.28 percent during the remainder of 2021 and a rate of 1.59 percent in 2022. Colorado made an interest payment of $1.5 million in September 2021 from Coronavirus Relief Funds. The state will be required to make the next interest payment on outstanding loans by September 30, 2022. By law, employer contributions to the Unemployment Compensation Fund cannot be used for these payments.

Under federal law, if a state does not repay a loan by November 10 after having outstanding loans on January 1 for two consecutive years, there is a reduction in the tax credit applied to the federal UI tax (FUTA) paid by every UI-covered employer. The state's outstanding loan balances are expected to trigger a reduction in the FUTA credit, which will increase the effective FUTA rate paid by employers in Colorado beginning January 2023, from 0.6 percent to 0.9 percent of the first $7,000 of wages per employee per year (or from $42 currently to $63 per employee per year). The effective FUTA rate will increase an additional 0.3 percent each year until the loan is repaid.

State Revenue

The bill is expected to reduce revenue to the Unemployment Compensation Fund by $120.8 million in FY 2023-24 and by $489.3 million in FY 2024-25. In FY 2023-24, this reduction results from moving employers to a lower premium rate schedule in calendar year 2024 based on the projected Unemployment Compensation Fund balance at the end of FY 2022-23 following the transfer and repayment of the federal advances required by the bill. For FY 2024-25, additional revenue losses result from removing the solvency surcharge in calendar year 2025.

State Transfers

This bill transfers $1.1 billion from the General Fund to the Unemployment Compensation Fund on July 1, 2022.

State Expenditures

The bill creates a one-time state expenditure of $1.014 billion from the Unemployment Compensation Fund in FY 2022-23 for the UI division to repay the federal government for the outstanding balance owed for advances made to the fund. The repayment may reduce state expenditures on interest payments for federal loans beginning in FY 2022-23. To the extent that the repayment reduces employer premiums and surcharges, UI expenditures on behalf of state employees may be reduced.

Other Budget Impacts

Transferring funds from the General Fund to the Unemployment Compensation Fund at a rate greater than 10 percent of the current revenues of the Unemployment Compensation Fund will cause the UI program to lose its status as an enterprise under TABOR and may require a vote of the people to regain enterprise status pursuant to Proposition 117.

TABOR refunds. The bill is expected to increase the state revenue required to be refunded to taxpayers by $2.2 billion for FY 2022-23 and $1.5 billion for FY 2023-24 due to the state's UI program losing its enterprise status and its revenue counting toward the state's revenue limit under TABOR. This estimate assumes the December 2021 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, placing additional cash fund revenue under the state's TABOR limit will reduce the amount of General Fund available to spend or save.

Technical Note

Federal law does not allow state UI funds to make payments directly or indirectly for anything other than UI benefits to individuals, and the bill does not specify another mechanism to repay the federal government. The fiscal note shows the payment as required by the bill, even though it is not allowed under federal law. The fiscal note will be revised if this technical issue is remedied.

The repayment of the federal advance will not change the rate schedule for 2023, as the fund balance determines the future rate on June 30, 2022.

Forecasted fund revenue and a reduction in benefits are likely to allow repayment of part of the loan before the implementation date in this bill, potentially resulting in an overpayment to the federal government.

Local Government and Statutory Public Entities

The bill may reduce UI premiums and surcharge payments for local government and statutory public entity employers. These impacts will vary and cannot be determined.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Counties	Information Technology
Labor and Employment	Municipalities
Personnel and Administration	Treasury