SB 22-234

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 22-1015	**Date:**	April 29, 2022
Prime Sponsors:	Sen. Hansen; Rankin Rep. Ortiz; Snyder	**Bill Status:**	Senate Finance
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Bill Topic: **UNEMPLOYMENT COMPENSATION**

Summary of Fiscal Impact:

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

The bill makes several changes to the Employment Security Act, including suspending the solvency surcharge, expanding unemployment benefits, and creating two new cash funds. The bill makes a one-time transfer of $600 million to the newly created Title XII repayment fund. It also decreases state revenue over the forecast period and increases state expenditures on an ongoing basis.

Appropriation Summary: The bill increases expenditures from two continuously appropriated funds in the CDLE. Additional appropriations for administration and other costs may also be required but have not been estimated as off this writing.

Fiscal Note Status: Due to time constraints, this fiscal note is preliminary. It will be revised when additional information is received.

Table 1
State Fiscal Impacts Under SB 22-234

		Current Year FY 2021-22	Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	Unemployment Compensation Fund	-	(123.1 million)	($167 million)
	Total Revenue	**-**	**(123.1 million)**	**($167 million)**
Expenditures	Title XII Repayment Fund	$580 million	$20 million	-
	Benefit Recovery Fund	-	$15 million	$15 million
	Total Expenditures	**$580 million**	**$35 million**	**$15 million**
Transfers/ Diversions	Revenue Loss Restoration CF	($600 million)	-	-
	Title XII Repayment Fund	$600 million	-	-
	Unemployment Compensation Fund	-	($15 million)	($15 million)
	Benefit Recovery Fund	-	$15 million	$15 million
	Net Transfer	**$0**	**$0**	**-**
Other Budget Impacts		-	-	-
		-	-	-

Summary of Legislation

Colorado Employment Security Act. The bill amends the Colorado Employment Security Act to:

- give the Division of Unemployment Insurance (division) in the Department of Labor and Employment (CDLE) the authority to levy bond assessments;
- make the temporary increase in partial unemployment benefits in current law permanent;
- repeal the requirement that an individual must wait at least one week before becoming eligible for unemployment compensation, as long as the balance of the unemployment compensation fund is at least $1 billion;
- require the division to study how to implement a dependent allowance for individuals receiving unemployment compensation;
- increase the share of each employer's premium going to the Employment Support Fund from 0.0011 to 0.00145;
- require an employer to provide an employee with information about unemployment compensation at the time of separation from the employer;
- extend the suspension of the solvency surcharge through calendar year 2023;
- create the Title XII Repayment Fund to repay advances from the federal unemployment account and any interest owed on such advances; and
- require the division to consider certain factors in determining whether repayment of overpaid unemployment compensation benefits would be inequitable.

Recovery benefits. The bill requires the CDLE to award grants to a third-party administrator to provide recovery benefits to eligible individuals, regardless of immigration status. Eligible individuals are individuals who have separated from employment through no fault of their own, received income from employment during a qualified base period, and are not eligible for and have not received Unemployment Insurance (UI) benefits due to immigration status. The grants are funded through 0.00035 of the premium each employer is required to submit to the division, up to $15 million each year. Eligible individuals may receive recovery benefits at a rate of 55 percent of their average weekly wage for the base period for a maximum of 13 weeks during their period of unemployment.

Benefit Recovery Fund. The bill creates the Benefit Recovery Fund to provide grants to a third-party administrator to provide recovery benefits to eligible individuals. The fund is continuously appropriated to the department. If the fund balance, adjusted for inflation, exceeds $30.0 million, the State Treasurer is required to transfer the excess into the Unemployment Compensation Fund.

Title XII Repayment Fund. The bill requires the State Treasurer to transfer $600 million from the Revenue Loss Restoration Cash Fund containing money from the American Rescue Plan Act of 2021 to the newly created Title XII Repayment Fund no later than three days after the bill's effective date. The fund is continuously appropriated to the division.

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 of total annual private wages 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 April 27, 2022, Colorado has an outstanding federal loan balance of $1.013 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

Assuming the March 2022 Legislative Council Staff forecast, by suspending the solvency surcharge in calendar year 2023 and shifting employers to a lower premium rate schedule in calendar year 2024, the bill is expected to reduce revenue to the Unemployment Compensation Fund by $123.1 million in FY 2022-23 and $167.0 million in FY 2023-24. This revenue is not subject to TABOR.

State Transfers

In FY 2021-22, the bill transfers $600 million from the Revenue Loss Restoration Cash Fund to the new Title XII Repayment Fund.

State Diversions

Beginning in FY 2022-23, the bill increases the amount of funds diverted from the Unemployment Compensation Fund to the Employment Support Fund by an additional 0.035 percent of employer premiums, up to $15.0 million each year. This funding is then diverted from the Employment Support Fund to the Benefit Recovery Fund.

State Expenditures

The bill increases state expenditures in several areas, including repayment of FUA loans, unemployment benefits to persons not eligible for regular unemployment due to immigration status, and administration within the CDLE. These costs are described below.

FUA loan repayment. Of the $600 million transferred to the Title XII Repayment Fund, it is assumed that $580 million from the Title XII Repayment Fund will be used to repay federal advances in FY 2021-22, and that $20 million will be used to pay interest on federal advances in FY 2022-23. Money in the Title XII Repayment Fund is continuously appropriated to the CDLE and the exact timing and amount of payments may differ from this estimate.

Recovery benefits. Based on the estimated diversion of employer premiums, it is assumed that up to $15 million per year will be used to pay recovery benefits to persons who are not eligible for unemployment benefits due to immigration status. A portion of this funding will be used to pay a third-party administer to oversee the benefit. Money in the Benefit Recovery Fund is continuously appropriated to the CDLE.

CDLE administration. The bill increases expenditures and workload in the CDLE for administrative costs associated with the bill's requirements to conduct a study, create a form for employers, and contract with a third party administrator to provide recovery benefits. These amounts have not been estimated at the time of this writing.

Effective Date

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

State Appropriations

The Title XII Repayment Fund and the Benefit Recovery Fund are continuously appropriated to the Department of Labor and Employment, so no further appropriation is required. Additional appropriations may be added as more information becomes available.

State and Local Government Contacts

Counties	Information Technology	Labor
Municipalities	Personnel	Treasury