S-1055.1   _____

SUBSTITUTE SENATE BILL 5135
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State of Washington   **62nd Legislature**   **2011 Regular Session**

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, Holmquist Newbry, King, Honeyford, Schoesler, Becker, Hobbs, Rockefeller, Baumgartner, Hill, Litzow, and Benton; by request of Governor Gregoire)

READ FIRST TIME 02/01/11.

1   AN ACT Relating to responding to the current economic conditions by
2 temporarily modifying the unemployment insurance social cost factor
3 rate for rate year 2011; amending RCW 50.29.025; creating a new
4 section; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6   **Sec. 1.** RCW 50.29.025 and 2010 c 72 s 1 are each amended to read
7 as follows:
8   (1) For contributions assessed for rate years 2005 through 2009,
9 the contribution rate for each employer subject to contributions under
10 RCW 50.24.010 shall be the sum of the array calculation factor rate and
11 the graduated social cost factor rate determined under this subsection,
12 and the solvency surcharge determined under RCW 50.29.041, if any.
13   (a) The array calculation factor rate shall be determined as
14 follows:
15   (i) An array shall be prepared, listing all qualified employers in
16 ascending order of their benefit ratios. The array shall show for each
17 qualified employer: (A) Identification number; (B) benefit ratio; and
18 (C) taxable payrolls for the four consecutive calendar quarters

1 immediately preceding the computation date and reported to the
2 employment security department by the cut-off date.
3   (ii) Each employer in the array shall be assigned to one of forty
4 rate classes according to his or her benefit ratio as follows, and,
5 except as provided in RCW 50.29.026, the array calculation factor rate
6 for each employer in the array shall be the rate specified in the rate
7 class to which the employer has been assigned:

	Benefit Ratio		Rate	Rate
	At least	Less than	Class	(percent)
		0.000001	1	0.00
	0.000001	0.001250	2	0.13
	0.001250	0.002500	3	0.25
	0.002500	0.003750	4	0.38
	0.003750	0.005000	5	0.50
	0.005000	0.006250	6	0.63
	0.006250	0.007500	7	0.75
	0.007500	0.008750	8	0.88
	0.008750	0.010000	9	1.00
	0.010000	0.011250	10	1.15
	0.011250	0.012500	11	1.30
	0.012500	0.013750	12	1.45
	0.013750	0.015000	13	1.60
	0.015000	0.016250	14	1.75
	0.016250	0.017500	15	1.90
	0.017500	0.018750	16	2.05
	0.018750	0.020000	17	2.20
	0.020000	0.021250	18	2.35
	0.021250	0.022500	19	2.50
	0.022500	0.023750	20	2.65
	0.023750	0.025000	21	2.80
	0.025000	0.026250	22	2.95
	0.026250	0.027500	23	3.10
	0.027500	0.028750	24	3.25
	0.028750	0.030000	25	3.40
	0.030000	0.031250	26	3.55
	0.031250	0.032500	27	3.70

1	0.032500	0.033750	28	3.85
2	0.033750	0.035000	29	4.00
3	0.035000	0.036250	30	4.15
4	0.036250	0.037500	31	4.30
5	0.037500	0.040000	32	4.45
6	0.040000	0.042500	33	4.60
7	0.042500	0.045000	34	4.75
8	0.045000	0.047500	35	4.90
9	0.047500	0.050000	36	5.05
10	0.050000	0.052500	37	5.20
11	0.052500	0.055000	38	5.30
12	0.055000	0.057500	39	5.35
13	0.057500		40	5.40

14   (b) The graduated social cost factor rate shall be determined as
15   follows:

16   (i)(A) Except as provided in (b)(i)(B) and (C) of this subsection,
17   the commissioner shall calculate the flat social cost factor for a rate
18   year by dividing the total social cost by the total taxable payroll.
19   The division shall be carried to the second decimal place with the
20   remaining fraction disregarded unless it amounts to five hundredths or
21   more, in which case the second decimal place shall be rounded to the
22   next higher digit. The flat social cost factor shall be expressed as
23   a percentage.

24   (B) If, on the cut-off date, the balance in the unemployment
25   compensation fund is determined by the commissioner to be an amount
26   that will provide more than ten months of unemployment benefits, the
27   commissioner shall calculate the flat social cost factor for the rate
28   year immediately following the cut-off date by reducing the total
29   social cost by the dollar amount that represents the number of months
30   for which the balance in the unemployment compensation fund on the cut-
31   off date will provide benefits above ten months and dividing the result
32   by the total taxable payroll. However, the calculation under this
33   subsection (1)(b)(i)(B) for a rate year may not result in a flat social
34   cost factor that is more than four-tenths lower than the calculation
35   under (b)(i)(A) of this subsection for that rate year.

36   For the purposes of this subsection, the commissioner shall
37   determine the number of months of unemployment benefits in the

unemployment compensation fund using the benefit cost rate for the
average of the three highest calendar benefit cost rates in the twenty
consecutive completed calendar years immediately preceding the cut-off
date or a period of consecutive calendar years immediately preceding
the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this
subsection (1)(b) shall be six-tenths of one percent, except that if
the balance in the unemployment compensation fund is determined by the
commissioner to be an amount that will provide:

(I) At least twelve months but less than fourteen months of
unemployment benefits, the minimum shall be five-tenths of one percent;
or

(II) At least fourteen months of unemployment benefits, the minimum
shall be five-tenths of one percent, except that, for employers in rate
class 1, the minimum shall be forty-five hundredths of one percent.

(ii)(A) Except as provided in (b)(ii)(B) of this subsection, the
graduated social cost factor rate for each employer in the array is the
flat social cost factor multiplied by the percentage specified as
follows for the rate class to which the employer has been assigned in
(a)(ii) of this subsection, except that the sum of an employer's array
calculation factor rate and the graduated social cost factor rate may
not exceed six and five-tenths percent or, for employers whose North
American industry classification system code is within "111," "112,"
"1141," "115," "3114," "3117," "42448," or "49312," may not exceed six
percent through rate year 2007 and may not exceed five and seven-tenths
percent for rate years 2008 and 2009:

(I) Rate class 1 - 78 percent;
(II) Rate class 2 - 82 percent;
(III) Rate class 3 - 86 percent;
(IV) Rate class 4 - 90 percent;
(V) Rate class 5 - 94 percent;
(VI) Rate class 6 - 98 percent;
(VII) Rate class 7 - 102 percent;
(VIII) Rate class 8 - 106 percent;
(IX) Rate class 9 - 110 percent;
(X) Rate class 10 - 114 percent;
(XI) Rate class 11 - 118 percent; and
(XII) Rate classes 12 through 40 - 120 percent.

(B) For contributions assessed beginning July 1, 2005, through
December 31, 2007, for employers whose North American industry
classification system code is "111," "112," "1141," "115," "3114,"
"3117," "42448," or "49312," the graduated social cost factor rate is
zero.

      (iii) For the purposes of this section:

      (A) "Total social cost" means the amount calculated by subtracting
the array calculation factor contributions paid by all employers with
respect to the four consecutive calendar quarters immediately preceding
the computation date and paid to the employment security department by
the cut-off date from the total unemployment benefits paid to claimants
in the same four consecutive calendar quarters. To calculate the flat
social cost factor for rate year 2005, the commissioner shall calculate
the total social cost using the array calculation factor contributions
that would have been required to be paid by all employers in the
calculation period if (a) of this subsection had been in effect for the
relevant period. To calculate the flat social cost factor for rate
years 2010 and 2011, the forty-five dollar increase paid as part of an
individual's weekly benefit amount as provided in RCW 50.20.1201 shall
not be considered for purposes of calculating the total unemployment
benefits paid to claimants in the four consecutive calendar quarters
immediately preceding the computation date.

      (B) "Total taxable payroll" means the total amount of wages subject
to tax, as determined under RCW 50.24.010, for all employers in the
four consecutive calendar quarters immediately preceding the
computation date and reported to the employment security department by
the cut-off date.

      (c) For employers who do not meet the definition of "qualified
employer" by reason of failure to pay contributions when due:

      (i) The array calculation factor rate shall be two-tenths higher
than that in rate class 40, except employers who have an approved
agency-deferred payment contract by September 30th of the previous rate
year. If any employer with an approved agency-deferred payment
contract fails to make any one of the succeeding deferred payments or
fails to submit any succeeding tax report and payment in a timely
manner, the employer's tax rate shall immediately revert to an array
calculation factor rate two-tenths higher than that in rate class 40;
and

1   (ii) The social cost factor rate shall be the social cost factor
2 rate assigned to rate class 40 under (b)(ii) of this subsection.
3   (d) For all other employers not qualified to be in the array:
4   (i) For rate years 2005, 2006, and 2007:
5   (A) The array calculation factor rate shall be a rate equal to the
6 average industry array calculation factor rate as determined by the
7 commissioner, plus fifteen percent of that amount; however, the rate
8 may not be less than one percent or more than the array calculation
9 factor rate in rate class 40; and
10   (B) The social cost factor rate shall be a rate equal to the
11 average industry social cost factor rate as determined by the
12 commissioner, plus fifteen percent of that amount, but not more than
13 the social cost factor rate assigned to rate class 40 under (b)(ii) of
14 this subsection.
15   (ii) For contributions assessed for rate years 2008 and 2009:
16   (A) The array calculation factor rate shall be a rate equal to the
17 average industry array calculation factor rate as determined by the
18 commissioner, multiplied by the history factor, but not less than one
19 percent or more than the array calculation factor rate in rate class
20 40;
21   (B) The social cost factor rate shall be a rate equal to the
22 average industry social cost factor rate as determined by the
23 commissioner, multiplied by the history factor, but not more than the
24 social cost factor rate assigned to rate class 40 under (b)(ii) of this
25 subsection; and
26   (C) The history factor shall be based on the total amounts of
27 benefits charged and contributions paid in the three fiscal years
28 ending prior to the computation date by employers not qualified to be
29 in the array, other than employers in (c) of this subsection, who were
30 first subject to contributions in the calendar year ending three years
31 prior to the computation date. The commissioner shall calculate the
32 history ratio by dividing the total amount of benefits charged by the
33 total amount of contributions paid in this three-year period by these
34 employers. The division shall be carried to the second decimal place
35 with the remaining fraction disregarded unless it amounts to five
36 one-hundredths or more, in which case the second decimal place shall be
37 rounded to the next higher digit. The commissioner shall determine the
38 history factor according to the history ratio as follows:

	History Ratio		History Factor (percent)
	At least	Less than	
(I)		.95	90
(II)	.95	1.05	100
(III)	1.05		115

(2) For contributions assessed in rate year 2010 and thereafter, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate	Rate
At least	Less than	Class	(percent)
	0.000001	1	0.00
0.000001	0.001250	2	0.11
0.001250	0.002500	3	0.22
0.002500	0.003750	4	0.33
0.003750	0.005000	5	0.43
0.005000	0.006250	6	0.54

1	0.006250	0.007500	7	0.65
2	0.007500	0.008750	8	0.76
3	0.008750	0.010000	9	0.88
4	0.010000	0.011250	10	1.01
5	0.011250	0.012500	11	1.14
6	0.012500	0.013750	12	1.28
7	0.013750	0.015000	13	1.41
8	0.015000	0.016250	14	1.54
9	0.016250	0.017500	15	1.67
10	0.017500	0.018750	16	1.80
11	0.018750	0.020000	17	1.94
12	0.020000	0.021250	18	2.07
13	0.021250	0.022500	19	2.20
14	0.022500	0.023750	20	2.38
15	0.023750	0.025000	21	2.50
16	0.025000	0.026250	22	2.63
17	0.026250	0.027500	23	2.75
18	0.027500	0.028750	24	2.88
19	0.028750	0.030000	25	3.00
20	0.030000	0.031250	26	3.13
21	0.031250	0.032500	27	3.25
22	0.032500	0.033750	28	3.38
23	0.033750	0.035000	29	3.50
24	0.035000	0.036250	30	3.63
25	0.036250	0.037500	31	3.75
26	0.037500	0.040000	32	4.00
27	0.040000	0.042500	33	4.25
28	0.042500	0.045000	34	4.50
29	0.045000	0.047500	35	4.75
30	0.047500	0.050000	36	5.00
31	0.050000	0.052500	37	5.15
32	0.052500	0.055000	38	5.25
33	0.055000	0.057500	39	5.30
34	0.057500		40	5.40

35   (b) The graduated social cost factor rate shall be determined as

36 follows:

1   (i)(A) Except as provided in (b)(i)(B) and (C) of this subsection,
2   the commissioner shall calculate the flat social cost factor for a rate
3   year by dividing the total social cost by the total taxable payroll.
4   The division shall be carried to the second decimal place with the
5   remaining fraction disregarded unless it amounts to five hundredths or
6   more, in which case the second decimal place shall be rounded to the
7   next higher digit. The flat social cost factor shall be expressed as
8   a percentage.
9   (B) If, on the cut-off date, the balance in the unemployment
10   compensation fund is determined by the commissioner to be an amount
11   that will provide more than ten months of unemployment benefits, the
12   commissioner shall calculate the flat social cost factor for the rate
13   year immediately following the cut-off date by reducing the total
14   social cost by the dollar amount that represents the number of months
15   for which the balance in the unemployment compensation fund on the cut-
16   off date will provide benefits above ten months and dividing the result
17   by the total taxable payroll. However, the calculation under this
18   subsection (2)(b)(i)(B) for a rate year may not result in a flat social
19   cost factor that is more than four-tenths lower than the calculation
20   under (b)(i)(A) of this subsection for that rate year. For rate year
21   2011, the calculation may not result in a flat social cost factor that
22   is more than one and twenty-two one-hundredths percent.
23   For the purposes of this subsection, the commissioner shall
24   determine the number of months of unemployment benefits in the
25   unemployment compensation fund using the benefit cost rate for the
26   average of the three highest calendar benefit cost rates in the twenty
27   consecutive completed calendar years immediately preceding the cut-off
28   date or a period of consecutive calendar years immediately preceding
29   the cut-off date that includes three recessions, if longer.
30   (C) The minimum flat social cost factor calculated under this
31   subsection (2)(b) shall be six-tenths of one percent, except that if
32   the balance in the unemployment compensation fund is determined by the
33   commissioner to be an amount that will provide:
34   (I) At least ten months but less than eleven months of unemployment
35   benefits, the minimum shall be five-tenths of one percent; or
36   (II) At least eleven months but less than twelve months of
37   unemployment benefits, the minimum shall be forty-five hundredths of
38   one percent; or

1   (III) At least twelve months but less than thirteen months of
2 unemployment benefits, the minimum shall be four-tenths of one percent;
3 or
4   (IV) At least thirteen months but less than fifteen months of
5 unemployment benefits, the minimum shall be thirty-five hundredths of
6 one percent; or
7   (V) At least fifteen months but less than seventeen months of
8 unemployment benefits, the minimum shall be twenty-five hundredths of
9 one percent; or
10   (VI) At least seventeen months but less than eighteen months of
11 unemployment benefits, the minimum shall be fifteen hundredths of one
12 percent; or
13   (VII) At least eighteen months of unemployment benefits, the
14 minimum shall be fifteen hundredths of one percent through rate year
15 2011 and shall be zero thereafter.
16   (ii)(A) Except as provided in (b)(ii)(B) of this subsection, the
17 graduated social cost factor rate for each employer in the array is the
18 flat social cost factor multiplied by the percentage specified as
19 follows for the rate class to which the employer has been assigned in
20 (a)(ii) of this subsection, except that the sum of an employer's array
21 calculation factor rate and the graduated social cost factor rate may
22 not exceed six percent or, for employers whose North American industry
23 classification system code is within "111," "112," "1141," "115,"
24 "3114," "3117," "42448," or "49312," may not exceed five and four-
25 tenths percent:
26   ((~~(A)~~)) <u>(I)</u> Rate class 1 - 78 percent;
27   ((~~(B)~~)) <u>(II)</u> Rate class 2 - 82 percent;
28   ((~~(C)~~)) <u>(III)</u> Rate class 3 - 86 percent;
29   ((~~(D)~~)) <u>(IV)</u> Rate class 4 - 90 percent;
30   ((~~(E)~~)) <u>(V)</u> Rate class 5 - 94 percent;
31   ((~~(F)~~)) <u>(VI)</u> Rate class 6 - 98 percent;
32   ((~~(G)~~)) <u>(VII)</u> Rate class 7 - 102 percent;
33   ((~~(H)~~)) <u>(VIII)</u> Rate class 8 - 106 percent;
34   ((~~(I)~~)) <u>(IX)</u> Rate class 9 - 110 percent;
35   ((~~(J)~~)) <u>(X)</u> Rate class 10 - 114 percent;
36   ((~~(K)~~)) <u>(XI)</u> Rate class 11 - 118 percent; and
37   ((~~(L)~~)) <u>(XII)</u> Rate classes 12 through 40 - 120 percent.

(B) For rate year 2011, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed five and four-tenths percent:

(I) Rate class 1 - 40 percent;

(II) Rate class 2 - 44 percent;

(III) Rate class 3 - 48 percent;

(IV) Rate class 4 - 52 percent;

(V) Rate class 5 - 56 percent;

(VI) Rate class 6 - 60 percent;

(VII) Rate class 7 - 64 percent;

(VIII) Rate class 8 - 68 percent;

(IX) Rate class 9 - 72 percent;

(X) Rate class 10 - 76 percent;

(XI) Rate class 11 - 80 percent;

(XII) Rate class 12 - 84 percent;

(XIII) Rate class 13 - 88 percent;

(XIV) Rate class 14 - 92 percent;

(XV) Rate class 15 - 96 percent;

(XVI) Rate class 16 - 100 percent;

(XVII) Rate class 17 - 104 percent;

(XVIII) Rate class 18 - 108 percent;

(XIX) Rate class 19 - 112 percent;

(XX) Rate class 20 - 116 percent; and

(XXI) Rate classes 21 through 40 - 120 percent.

(iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) For employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due:

(i) For rate years through 2010:

(A) The array calculation factor rate shall be two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(B) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii)(A) of this subsection.

(ii) For rate years 2011 and thereafter:

(A)(I) For an employer who does not enter into an approved agency-deferred payment contract as described in (c)(ii)(A)(II) or (III) of this subsection, the array calculation factor rate shall be the rate it would have been if the employer had not been delinquent in payment plus an additional one percent or, if the employer is delinquent in payment for a second or more consecutive year, an additional two percent;

(II) For an employer who enters an approved agency-deferred payment contract by September 30th of the previous rate year, the array calculation factor rate shall be the rate it would have been if the employer had not been delinquent in payment;

(III) For an employer who enters an approved agency-deferred payment contract after September 30th of the previous rate year, but within thirty days of the date the department sent its first tax rate notice, the array calculation factor rate shall be the rate it would have been had the employer not been delinquent in payment plus an additional one-half of one percent or, if the employer is delinquent in payment for a second or more consecutive year, an additional one and one-half percent;

1   (IV) For an employer who enters an approved agency-deferred payment
2   contract as described in (c)(ii)(A)(II) or (III) of this subsection,
3   but who fails to make any one of the succeeding deferred payments or
4   fails to submit any succeeding tax report and payment in a timely
5   manner, the array calculation factor rate shall immediately revert to
6   the applicable array calculation factor rate under (c)(ii)(A)(I) of
7   this subsection; and

8   (B) The social cost factor rate shall be the social cost factor
9   rate assigned to rate class 40 for the relevant year under (b)(ii) (A)
10 or (B) of this subsection.

11   (d) For all other employers not qualified to be in the array:

12   (i) The array calculation factor rate shall be a rate equal to the
13 average industry array calculation factor rate as determined by the
14 commissioner, multiplied by the history factor, but not less than one
15 percent or more than the array calculation factor rate in rate class
16 40;

17   (ii) The social cost factor rate shall be a rate equal to the
18 average industry social cost factor rate as determined by the
19 commissioner, multiplied by the history factor, but not more than the
20 social cost factor rate assigned to rate class 40 for the relevant year
21 under (b)(ii) (A) or (B) of this subsection; and

22   (iii) The history factor shall be based on the total amounts of
23 benefits charged and contributions paid in the three fiscal years
24 ending prior to the computation date by employers not qualified to be
25 in the array, other than employers in (c) of this subsection, who were
26 first subject to contributions in the calendar year ending three years
27 prior to the computation date. The commissioner shall calculate the
28 history ratio by dividing the total amount of benefits charged by the
29 total amount of contributions paid in this three-year period by these
30 employers. The division shall be carried to the second decimal place
31 with the remaining fraction disregarded unless it amounts to five
32 one-hundredths or more, in which case the second decimal place shall be
33 rounded to the next higher digit. The commissioner shall determine the
34 history factor according to the history ratio as follows:

		History Ratio		History Factor (percent)
		At least	Less than	
(A)			.95	90
(B)		.95	1.05	100
(C)		1.05		115

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the North American industry classification system code.

NEW SECTION. **Sec. 2.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. **Sec. 3.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 4.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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