



SENATE BILL 15: Unemployment Insurance Law Change

This Bill Analysis reflects the contents of the bill as it was presented in committee.

2013-2014 General Assembly

Committee:	Rules, Calendar, and Operations of the House	Date:	August 6, 2015
Introduced by:	Sen. Rucho	Prepared by:	Cindy Avrette
Analysis of:	PCS to Second Edition S15-CSRbxr-45		Committee Counsel

SUMMARY¹: *Senate Bill 15² combines three bills that were recommendations of the Joint Legislative Oversight Committee on Unemployment Insurance into this bill. The proposed House committee substitute does the following:*

- *Makes additional changes requested by the Division of Employment Security (DES).*
- *Confirms the sitting Board of Review members and appoints and confirms a Board member for the four-year term beginning July 1, 2015.*
- *Directs the Program Evaluation Division to study the benefits and costs to the State of providing a higher appeals level for unemployment benefit decisions through the Board of Review.*
- *Suspends the 20% surcharge for the tax year 2016 if the amount in the State's account in the Unemployment Trust Fund equals or exceeds \$1 billion by March 1, 2016.*

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Part I: Enhance UI Program Integrity/Reporting

Part I: Senate Bill 15/House Bill 22, Enhance UI Program Integrity/Reporting, would require the Department of Commerce's Division of Employment Security (DES) to enhance program integrity as follows:

- *Maximize use of the Government Data Analytics Center (GDAC) and Southeast Consortium Unemployment Insurance Benefits Initiative (SCUBI).*
- *Coordinate with the Office of Information Technology Services, the Department of Health and Human Services, the Department of Revenue, and the Office of State Controller.*
- *Provide quarterly and annual reports.*

The Joint Legislative Oversight Committee on Unemployment Insurance studied the program integrity efforts of the Division of Employment Security (DES). The Committee focused on improper payments and sought to discern how DES leveraged resources within the State's Government Data Analytics Center (GDAC). Part I would require DES to enhance its program integrity efforts through the use of business intelligence and data analytics. The bill instructs DES to identify program integrity capabilities and use the capabilities of 6 listed sources:

- Government Data Analytics Center (GDAC)
- Southeast Consortium Unemployment Insurance Benefits Initiative (SCUBI).

¹ The Unemployment Insurance (UI) Team prepared this summary: *Cindy Avrette, Rodney Bizzell, Aubrey Incorvaia, Janice Paul, Phyllis Pickett, and Greg Roney.*

² The House companion bills are noted in the summary highlights below. All three of the House companion bills are in the House Finance Committee.



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- Office of Information Technology Services.
- Department of Health and Human Services.
- Department of Revenue.
- Office of State Controller.

Beginning October 1, 2015,³ DES must report quarterly to the Chairs of the Joint Legislative Oversight Committee on Unemployment Insurance, the Chairs of the Joint Legislative Oversight Committee on Information Technology, the Chairs of the House Appropriations Subcommittee on Natural and Economic Resources, the Chairs of the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division the following:⁴

- UI overpayments, improper payments, and fraudulent payments.
- Fraud perpetrator information, by type and activity such as employee misclassification, SUTA dumping, fictitious employers, fictitious claimants, deceased claimants, and incarcerated claimants.
- Investigation activity, including type of investigation and the number of alerts received and investigated, the number of false positives, and the number of dispositions entered.

Beginning January 1, 2016, DES must report annually to the General Assembly the following:

- Methodology for UI program integrity investigation.
- State's Benefit Accuracy Measurement (BAM) as required by the US Department of Labor.
- Results of coordination efforts with the Office of Information Technology Services, the Department of Health and Human Services, the Department of Revenue, and the Office of State Controller.
- Plans for continued improvement of program integrity.
- Information in quarterly reports.

This Part would become effective when it becomes law.

Part II: Unemployment Insurance Law Changes

Part II: Senate Bill 16/House Bill 24, Unemployment Insurance Law Changes, would several changes both houses passed in House Bill 1069 of the 2013 Legislative Session⁵ and some additional changes requested by the Division of Employment Security.

Section 2.1 would authorize DMV to disclose social security numbers to DES. The social security numbers are disclosed for the purpose of verifying employer and claimant identity. DMV obtains social security numbers upon an individual's application for an identification card, learners permit, or driver's license. DMV may only disclose the numbers as permitted by federal and State laws.

Section 2.2 would modify the work search requirement by increasing the number of job contacts a claimant must make each week from two to five and by eliminating the requirement that the claimant must make those contacts on two different days. To receive UI benefits, a claimant must be actively searching for work. Under current law, a claimant is considered to be actively searching for work if the claimant makes two job contacts with potential employers on two different days during a week. This change would become effective January 1, 2016.

Section 2.3 would eliminate the procedure to request reconsideration of decisions of DES and modernize the language of G.S. 96-15(h). Under current law, a party to any decision of DES may request

³ House PCS changes the date from April 1, 2015, to October 1, 2015.

⁴ House PCS excludes reporting requirements that both GDAC and DES have concluded are onerous and that the current system is unable to accurately identify.

⁵ The Governor vetoed House Bill 1069, 2013 Session.

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reconsideration of the decision. The decision is not final until the request for reconsideration has been decided. This change would become effective January 1, 2016.

Section 2.4 would correct statutory references to the Division of Employment Security.

Section 2.5 would clarify the ability of DES to use attachment and garnishment of a delinquent employer's credit card receipts to satisfy a judgment for unpaid employment taxes. DES would receive those funds directly from a credit card company or clearinghouse in discharge of the debt. DES must prevail in a civil action against an employer for unpaid employment taxes before it could use any collection remedy. G.S. 1-359 governs the manner in which debtors of a judgment debtor may satisfy an execution. Attachment and garnishment of credit card receipts is one of the ways that a debt may be satisfied. This Part would become effective when it becomes law.

Section 2.6 would add a new, statutory eligibility requirement to receive UI benefits that claimants must present photo identification. Valid photo identification requires the individual's photograph and must be one of the following documents:

- A driver's license, learner's permit, provisional license, or nonoperators identification card issued by North Carolina, another state, the District of Columbia, United States territory, or United States commonwealth.
- A United States passport.
- A United States military identification card.
- A Veterans Identification Card issued by the United States Department of Veterans Affairs.
- A tribal enrollment card issued by a federally recognized tribe.
- A traveler card issued by the United States Department of Homeland Security.⁶
- Any other document issued by the United States or any state that the Division determines adequately identifies the individual.

DES administratively requires UI claimants to present photo identification before receiving services. DES imposed the photo identification requirement to address fraudulent UI claims and create an audit trail. The photograph is evidence of the individual who committed fraud and aids prosecution of criminal offenses. US DOL supports program integrity measures such as requiring photo identification. US DOL provided a staff opinion that photo identification is a permissible eligibility requirement for UI claimants as part of the requirement to report to DES. This Part would become effective when it becomes law.

Section 2.7 would extend the deadline for adoption of DES rules from December 31, 2012, to May 20, 2015. DES has met this deadline and anticipates rules will be in place and effective by July 1, 2015. This Part would become effective when it becomes law. DES has largely been conducting its business in the absence of any rules governing its practices and procedures since December 31, 2012.

Section 2.8 would set the duration formula for unemployment benefits, which is used to determine the maximum number of weeks of eligibility, based only on unemployment rates. Currently, the formula also uses a variable duration formula that determines the number of weeks for which claimants qualify within the range based on attachment to workforce. However, during the 2013-2014 interim, DES determined that the duration formula did not yield results less than 17 weeks. Therefore, when the maximum number of weeks based on the unemployment rate is 17 or less, claimants receive the maximum because the formula does not yield any results within the range. While this change may eliminate attachment to workforce as a factor in measuring duration, attachment to the workforce remains a factor in the calculation of the Weekly Benefit Amount (WBA) because the formula for the

⁶ House PCS adds this acceptable form of identification.

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WBA is based on the wages received in the most recent two quarters. This section would become effective July 1, 2015.

Section 2.9 would remove the requirement that DES notify employers via a FAX when a claim is filed. The House PCS adds this provision. The purpose of the program is to notify employers of a claim. Today, through the State Information Data Exchange (SIDES) program, DES notifies employers electronically of separation information, and employers have the ability to respond electronically to that information. The provision of notice via FAX is antiquated and time consuming.

This section also provides that a continuance may be granted only for the reasons prescribed by rule. The proposed DES rules specify the following grounds for a continuance: illness of the party; death in the immediate family of the party; a need to obtain an interpreter or translator; a religious observance; jury duty; actively seeking legal representation; court appearance unrelated to DES; active military duty; scheduling conflict created by employment; or to accommodate the business needs of the employer. The House PCS adds this provision at the request of DES. The current statute provides that a continuance may be granted "for good cause", but it does little to define "good cause".⁷ This section would become effective when it becomes law.

Section 2.10 amends the definition of a "valid claim" to conform to the minimum weekly benefit amount that may be issued under G.S. 96-14.2(a). A person is not eligible for benefits if the weekly benefit amount is less than \$15. The House PCS added this section at the request of DES. This section would apply to claims filed on or after October 4, 2015.

Part III: DES Board of Review

Part III: Senate Bill 17/House Bill 23, DES Board of Review, would provide more clarity to the appointment process for the Board of Review, create staggered terms for the members of the Board of Review, and ratify past unemployment appeals decisions. The House PCS would confirm the current members of the Board of Review and appoint and confirm an individual for the term beginning July 1, 2015.

In S.L. 2011-401, the General Assembly created a Board of Review⁸ to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Lower Appeals Department of DES. The Board consists of three members⁹ appointed by the Governor and confirmed by the General Assembly: one member representing employers, one member representing employees, and one member representing the general public.¹⁰ The member representing the general public is designated as the chair of the Board and must be a licensed attorney. The members serve four-year terms. The statute provides little guidance as to the appointment and confirmation process.

Beginning November 1, 2011, the Board of Review was the body statutorily charged with providing the second level of appeal. However, the Board was not appointed until December 6, 2013. In the absence of a Board, the Assistant Secretary of Commerce for DES, or the Secretary of Commerce's designee, provided parties with the second level of review. In a case before the Superior Court in Rowan County, the Court noted that the Assistant Secretary of Commerce for DES did not have the statutory authority to make those decisions. According to the testimony in the case,¹¹ there may have been 13,000 lower level

⁷ DES' reason for requesting this change is to encourage its efforts in meeting timeliness and aging performance measures used by the US Department of Labor. Referencing petitioners to the rules for the list of reasons acceptable for a continuance may help alleviate the backlog in the appeals process.

⁸ S.L. 2011-401.

⁹ G.S.96-4(b).

¹⁰ The Governor made the following appointments to the Board of Review: Keith Holliday, Stanley Campbell, and Jeanette Doran.

¹¹ Wesley A. Lane v. N.C. Department of Commerce, Division of Employment Security, Rowan County Superior Court 13 CvS 1109.

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decisions appealed to the second level of review prior to the Governor's appointment of the Board of Review. A party who does not agree with a DES decision or determination may seek redress in the Superior Court. The failure to provide a second level of review in the form required by the statute (i.e., by a properly constituted Board of Review) does not harm a party who disagrees with a decision because the party has the ability to appeal to Superior Court.

Part III seeks to address several concerns related to the Board of Review:

- The legality of appeals decisions issued since November 1, 2011.
- The continuity of knowledge on the Board of Review.
- The timely appointment of Board of Review members.
- The costs and benefits of having a Board of Review hear and decide higher appeal decisions.

Section 3.1, added by the House PCS, would confirm the Governor's appointees to the Board of Review and set the length of their terms on a staggered basis:¹²

- The term for Jeanette Doran, the member of the Board of Review representing the general public, would expire in two years, June 30, 2015. She would continue to serve a second term, and the length of the second term would be four years.
- The term for Keith Holliday, the member of the Board of Review representing employers, would expire in three years, June 30, 2016. The Governor will have to appoint a member to serve, as provided in subsection (a), for the term beginning July 1, 2016, and the General Assembly will have to confirm that appointment during the 2016 legislative session. The second term would be a four-year term.
- The term for Stanley Campbell, the member of the Board of Review representing employees, would expire in four years, June 30, 2017.

Section 3.2 would validate the second level appeals decisions made since November 1, 2011, in two ways:

- Provide that decisions made by the Assistant Secretary of Commerce for DES or the Secretary of Commerce's designee are validated and given the same legal effect as if the decision had been issued by the Board of Review.
- Provide that decisions made by the three individuals appointed by the Governor in December 2013 to serve on the Board of Review are validated and given the same legal effect as if the decision had been issued by the Board of Review.

Section 3.3 would provide greater clarity and specificity to the appointment and confirmation process. The appointment and confirmation process proposed in the bill is similar to the current process for the appointment and confirmation of members serving on the Industrial Commission. Subsection (a) repeals the current subsection of G.S. 96-4 related to the Board of Review and replaces it in subsection (b) with a new statute dedicated to setting forth the confirmation process. Subsection (b) does the following:

- To help ensure independence of decision-making, it states the purpose of the Board of Review is to determine appeals policies and procedures and to hear appeals arising from the decision and determinations of DES. The Board and its staff must perform their job responsibilities independent of the Governor, the General Assembly, the Department of Commerce, and DES. It must perform its responsibilities in accordance with any written guidance promulgated and issued by US DOL.

¹² Doran's term would expire June 30, 2015; Holliday's term would expire June 30, 2016; and Campbell's term would expire June 30, 2017.

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- To help ensure continuity of knowledge and expertise, it creates staggered four year terms. It specifies that the terms begin on July 1 and end on June 30 of the fourth year.
- To help ensure timely appointment of Board members, it requires the Governor to submit the name of an individual to the General Assembly for confirmation on or before May 1 of the year of the expiration of the term. If the General Assembly does not confirm the nomination by May 30, the office is considered vacant and the Governor must submit the name of another individual to the General Assembly for confirmation within 30 days. If the Governor fails to timely submit a nomination, then the General Assembly may fill the office.¹³
- When a vacancy occurs in an office of the Board of Review, the Governor has 30 days to submit the name of an individual to the General Assembly for confirmation to serve on the Board of Review. If the General Assembly fails to confirm the individual within 30 days of the submission, the office is considered vacant and the Governor must submit the name of another individual to the General Assembly for confirmation. If the Governor fails to timely submit a nomination, then the General Assembly may fill the office.
- If a vacancy exists when the General Assembly is not in session, the Governor may appoint an individual to serve on the Board of Review on an interim basis. The Governor must submit the name of the person serving on an interim basis to the General Assembly for confirmation within 14 days of the date the General Assembly convenes or reconvenes a Regular Session.

Section 3.4 directs the Program Evaluation Division to study the value provided to the State by the Board of Review. The study should include an analysis of other states, a cost-benefit analysis, the value derived from the appeals decisions of the Board, and any non-quantifiable value provided to the State by the Board. The House PCS substituted the PED study in place of the report the original bill directed the Department of Commerce and the Board of Review to provide to the House and Senate Appropriations committees by May 1, 2015.

Part IV. Tax Changes

The House PCS adds a Part IV to the bill. It would move a technical change from the original bill to this section; it would begin charging benefits to an employer's account on a quarterly basis, and it would suspend the Reserve Fund collection in 2016 if the balance in the Unemployment Trust Fund equals or exceeds \$1 billion by March 1, 2016.

Section 4.1 would make a technical change to move the date for the calculation of tax rates for certain employers from July 31 to June 30. The calculation is based on a 12-month period, and June 30 is the end of the calendar quarter. This change would become effective for contributions payable for calendar quarters beginning on or after January 1, 2014.

Section 4.2 would begin charging benefits to employer's accounts on a quarterly basis, effective January 3, 2016, and applicable to claims effective on or after that date. Under current law, benefits are charged annually on August 1st. A benefit may not be charged until the claim's benefit year has expired. Compliance with these two provisions means there is a significant delay between the time benefits are paid and the benefits are charged. For example:

- Benefits paid on a claim opened on May 1, 2015, would not be charged to the employer's account until August 2016. The benefits charged on August 1, 2016, would impact the employer's 2017 tax rate and the employer's first tax payment for the 2017 taxable year would be May 1, 2017.

¹³ In an odd-numbered year, the recommendation would be made by the President Pro Tempore of the Senate. In an even-numbered year the recommendation would be made by the Speaker of the House of Representatives.

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- Similarly, because of the annual computation date, the impact of benefits paid on a claim opened on August 1, 2015, would not be felt by the employer until the May 2018 tax payment.
- Likewise, although House Bill 4 passed in February 2013, the computation of the 2016 tax rates will be the first year that employers will realize the impact of the reduced maximum weekly benefit amount and the maximum duration of benefits in their benefit charges.

North Carolina is one of only two states that charge on an annual basis. Most states charge benefits quarterly. DES is currently developing a new benefit payment system with a consortium with South Carolina and Georgia. Both of these states charge benefits on a quarterly basis. If North Carolina remains on an annual basis, DES will be responsible for additional charges from the contractor for the variance in building the benefits system. DES is requesting this change to quarterly benefit charging not only for purposes of the new benefit payment system with our neighboring states, but also because a more frequent posting of benefit charges will help employers anticipate future tax liabilities, will help DES detect fraud quicker, and will allow North Carolina to make better use of federal reports by coming into compliance with federal reporting requirements.

The transition of moving from an annual benefit charging system to a quarterly one is expected to impact less than 20% of North Carolina employers.¹⁴ Employers who reimburse benefits paid may also feel some impact during the transition. The bill seeks to reduce the impact on these employers by starting quarterly charging for claims that begin their benefit year on or after January 3, 2016. Beginning the quarterly charging in January would allow DES to phase implementation over two charging cycles. Also, the 2016 tax year will coincide with the FUTA tax rate reduction and, if this bill passes in its current form, with the likely suspension of the 20% reserve fund surcharge.

Section 4.3 would suspend the 20% surtax for the calendar year 2016 if the amount in the State's account in the Unemployment Trust Fund equals or exceeds \$1 billion by March 1, 2016. Under current law, the surcharge is suspended if the amount in the Trust Fund equals or exceeds \$1 billion on the August 1 computation date. Although the amount in the Trust Fund is not expected to reach the targeted amount by August 1st, it is anticipated that the target will be reached by the end of the year. The State's projected balance in the Trust Fund on December 31, 2015, is \$1,088,208,340.

The primary purpose of the Unemployment Insurance Reserve Fund is to provide a source of funds to pay interest payments due on federal advances so the State does not have to use General Fund availability for that purpose. The balance in the Reserve Fund may not exceed \$50 million or the amount of interest paid the previous September on federal advances. When the amount in the Reserve Fund exceeds the cap, the excess must be transferred to the State's account in the Unemployment Insurance Fund.

¹⁴ In calculating 2015 tax rates, 18% of employers had benefit charges to their account.