



SENATE BILL 15: Unemployment Insurance Law Changes

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

2013-2014 General Assembly

Committee:	Senate Re-ref to Finance. If fav, re-ref to Information Technology	Date:	February 11, 2015
Introduced by:	Sen. Rucho	Prepared by:	UI Team
Analysis of:	PCS to First Edition S15-CSTM		

SUMMARY¹: *The Proposed Committee Substitute (PCS) for Senate Bill 15 combines three bills that were recommendations of the Joint Legislative Oversight Committee on Unemployment Insurance:*

- **Part I of PCS: Senate Bill 15, 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.*
- **Part II of PCS: Senate Bill 16, Unemployment Insurance Law Changes, would make the following changes to the unemployment insurance (UI) laws:**
 - *Authorize the Division of Motor Vehicles (DMV) to disclose social security numbers to DES for the purpose of verifying employer and claimant identity.*
 - *Require UI claimants to contact 5 potential employers per week.*
 - *Eliminate the procedure to request reconsideration of DES decisions.*
 - *Clarify DES authority to garnish and attach the credit card receipts of delinquent taxpayers.*
 - *Require photo identification to receive UI benefits.*
 - *Extend the deadline for the adoption of DES rules.*
 - *Set the duration of unemployment benefits based only on unemployment rates.*
 - *Make other technical changes to modernize language and fix statutory references to DES.*
- **Part III of PCS: Senate Bill 17, 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.**

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



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CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Part I of PCS: Senate Bill 15, Enhance UI Program Integrity/Reporting

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 of the PCS would require DES to enhance its program integrity efforts through the use of business intelligence and data analytics. The PCS 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).
- Office of Information Technology Services.
- Department of Health and Human Services.
- Department of Revenue.
- Office of State Controller.

Beginning April 1, 2015, 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:

- 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, number, and source of lead.

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 of PCS: Senate Bill 16, Unemployment Insurance Law Changes

The General Assembly ratified House Bill 1069 during the 2014 legislative session. The Governor vetoed the bill. The provisions in Part II of the PCS incorporate many of the provisions that were in House Bill 1069. This Part does not include the provisions cited by the Governor in his veto message.

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 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

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end of the calendar quarter. This change would become effective for contributions payable for calendar quarters beginning on or after January 1, 2014

Section 2.3 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 July 1, 2015.

Section 2.4 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 reconsideration of the decision. The decision is not final until the request for reconsideration has been decided. This change would become effective July 1, 2015.

Section 2.5 would correct statutory references to the Division of Employment Security.

Section 2.6 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 2.7 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.
- 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.

In 2011, the General Assembly created DES within the NC Department of Commerce and transferred all of the functions and operations of the former Employment Security Commission to DES, effective November 1, 2011. In addition to the merger and consolidation, S.L. 2011-401 made DES subject to rulemaking under North Carolina's Administrative Procedure Act; the Employment Security Commission had been exempt from rule-making. In recognition of this different policy decision, Section 1.10(c) of S.L. 2011-401 directed DES to "adopt all existing rules and regulations in accordance with

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Article 2A of Chapter 150B of the General Statutes. Any existing rule that has not been readopted by December 31, 2012, shall expire," thereby allowing DES 18 months to adopt rules.²

DES did not adopt its existing Commission Regulations as rules by the December 31, 2012, deadline. DES also failed to act in 2013 and 2014, with the exception of the adoption of four rules related to confidentiality that became effective May 1, 2013. DES requested an exemption from the rule-making process, but the General Assembly did not enact an exemption. On several occasions during the 2014 legislative session, DES requested a statutory extension of the December 31, 2012, deadline. Although Section 3.10 of House Bill 761 granted an extension of the deadline, the bill failed to be enacted.

Section 2.7 would extend the deadline for adoption of DES rules from December 31, 2012, to May 20, 2015. DES has largely been conducting its business in the absence of any rules governing its practices and procedures since December 31, 2012. After the rules are submitted to OAH, the 60-day public comment period will begin. Given that the rules will codify the current practices the agency, few to no comments are expected. It is anticipated the rules will be placed on the May agenda of the Rules Review Commission and become effective July 1, 2015. This Part would become effective when it becomes law.

In 2013, the General Assembly enacted legislation that bases the number of weeks of unemployment benefits on two factors: a maximum number of possible weeks based upon a sliding scale tied to the unemployment rate³ and a variable duration formula. The variable duration formula determines the number of weeks for which claimants qualify within the range based on attachment to workforce. Claimants with a more even distribution of wages throughout the base period receive a greater number of weeks than claimants with wages concentrated in less than four quarters. If the formula results in a number less than the range minimum, the claimant receives the minimum. Similarly, if the formula results in a number higher than the range maximum, the claimant receives the maximum.

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. To address this issue, Section 2.9 would set the duration formula for unemployment benefits, which is used to determine the number of weeks of eligibility, based only on unemployment rates. 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 WBA is based on the wages received in the most recent two quarters. This section would become effective July 1, 2015, and apply to claims for unemployment benefits filed on or after that date.

Part III of PCS: Senate Bill 17, DES Board of Review

In S.L. 2011-401, the General Assembly created a Board of Review⁴ 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 members⁵ 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.⁶ The member representing the general public is designated

² The Industrial Commission also became subject to rule-making through legislation enacted in 2011. The Industrial Commission met the December 2012 statutory deadline in November 2012.

³ If the unemployment rate is 5.5% or less, the number of weeks of eligibility ranges between 5 and 12. For each one-half percent increase in the unemployment rate, the minimum and maximum number of weeks increase by one, up to a range of 13-20 weeks when the unemployment rate is above 9%.

⁴ S.L. 2011-401.

⁵ G.S.96-4(b).

⁶ The Governor made the following appointments to the Board of Review: Keith Holliday, Stanley Campbell, and Jeanette Doran.

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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, G.S. 96-4 provided a second level of appeal to an impartial Board of Review. 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 that the statute vested in the Board 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,⁷ there may have been 13,000 lower level 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 of the PCS 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 independence and adequate staffing of the Board of Review.

Section 3.1 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. The individuals serving as members of the Board were appointed by the Governor on December 6, 2013; those appointments have not been confirmed by the General Assembly.

Section 3.2 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.
- 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.

⁷ Wesley A. Lane v. N.C. Department of Commerce, Division of Employment Security, Rowan County Superior Court 13 CvS 1109.

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- 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.⁸
- 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 3.3 would give effect to the staggered terms created under Section 3.2 of the bill. It specifies that the term of the member serving on the current Board of Review that represents employers expires June 30, 2015; the term of the member that represents employees expires June 30, 2016; and the term of the member that represents the general public expires June 30, 2017.

Section 3.4 seeks to ensure that the Board of Review has sufficient resources to perform its job responsibilities. To enable the General Assembly to make informed budgetary decisions, Section 3.4 requires the Secretary of Commerce and the chair of the Board of Review to provide a report by May 1, 2015, on all of the following⁹:

- The measures taken to ensure the independence of the staff tasked with assisting the Board of Review.
- The number, types, and classifications of positions assigned to staff the Board.
- For each staff assigned to the Board, the percentage of duties that involve work only for the Board and the nature of those duties as well as the percentage of duties that do not involve the work of the Board.
- An opinion as to whether or not adequate staff is assigned to the Board, and if not, what additional resources are required to achieve adequate staffing.

The report must be submitted to the Chairs of the Joint Legislative Oversight Committee on Unemployment Insurance, the Chairs of the Senate Appropriations Committee on Natural and Economic Resources, the Chairs of the House or Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division.

Section 3.1 would become effective when it becomes law and applies to decisions rendered on or after November 1, 2011. The remainder of the bill would become effective when it becomes law.

⁸ 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.

⁹ The Joint Legislative Oversight Committee on Unemployment Insurance recommended a special provision to the 2015 General Assembly that would transfer four attorneys and one paralegal from DES to the Board of Review and it would appropriate \$486,043 for the 2015-16 fiscal year to pay the legal staff costs of the Board.