



HOUSE BILL 4: UI Fund Solvency & Program Changes

2013-2014 General Assembly

Committee:	House Finance	Date:	January 30, 2013
Introduced by:	Reps. Howard, Warren, Starnes, Setzer	Prepared by:	Cindy Avrette
Analysis of:	PCS to First Edition H4-CSRbx-1		Committee Counsel

SUMMARY: *The proposed House committee substitute removes the provisions of the bill that must be referred to the Appropriations Committee and modernizes the language of the statutes to make the statutes concise, intelligible, and easy to administer. The PCS does not make any material changes to the bill recommended by the Revenue Laws Study Committee and introduced as House Bill 4, VI.*

House Bill 4 would make the following changes to the State unemployment insurance program (UI) to accelerate¹ the repayment of the \$2.5 billion advance the State borrowed from the federal government to pay UI benefits:

- *Effective January 1, 2014, the bill would make the following tax rate changes: increase the minimum State unemployment tax (SUTA) rates from 0% to .06%, increase maximum SUTA tax rate from 5.7% to 5.76%; and compute SUTA tax rates based on a formula.*
- *Effective July 1, 2013, the bill would establish a new trigger for the collection and suspension of the surtax, which is equal to 20% of an employer's SUTA liability.*
- *Effective July 1, 2013, the bill would require a 1% reserve from all governmental entity and nonprofit employers that elect to finance benefits through reimbursement, and disallow refunds.*
- *Effective July 1, 2013, the bill would transfer \$16.6 million from various funds to the UI Fund to pay principal on the debt. (The PCS removes these appropriating provisions.)*
- *Effective, July 1, 2013, the bill would restrict the use of revenues in the Employment Security Commission Reserve Fund and the Special Employment Security Administration Fund.*
- *Effective July 1, 2013, the bill would make the following benefit changes: reduce the maximum duration of regular benefits from 26 weeks to 20 weeks and tie the duration of benefits to the seasonal adjusted unemployment rate; reduce the maximum weekly benefit amount (WBA) from \$535 to \$350; and change the calculation of the WBA from a formula based on the high quarter wage in the claimant's base period to the average of the last two quarters of that period.*
- *Effective July 1, 2013, the bill would restrict the optional triggers for the availability of extended benefits to those times when the benefits would be 100% federally funded. It does not change the mandatory trigger for extended benefits.*
- *Effective July 1, 2013, the bill would make the following programmatic changes: require a waiting week for each new benefit claim; repeal substantial fault; eliminate most good cause*

¹ Simulations prepared by the Upjohn Institute suggest the UI Fund would have a positive credit balance in 2018 if the State did not change its laws and relied solely on federal tax increases for the payment of the debt. A simulation based on the changes proposed in the bill suggests the UI Fund would have a positive credit balance in 2015.



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provisions for leaving work; and redefine suitable work as any work paying 120% of weekly benefit amount after 10 weeks of benefits.

- *The bill would establish a Joint Legislative Oversight Committee on Unemployment Insurance.*

BACKGROUND: The Unemployment Compensation Program is a Federal-state partnership created by the federal Social Security Act of 1935 and the Federal Unemployment Tax Act. The purpose of the UI program is to provide economic stability to both the unemployed individual and the surrounding community. Federal law requires states to offer temporary unemployment compensation benefits to individuals who lose a job through no fault of their own and are able, available, and actively seeking work. States may design their own UI program so long as the program meets minimal federal coverage and benefit requirements. Employers pay both a federal and state unemployment tax to fund the program. No part of either tax may be deducted from an employee's wages.

The FUTA tax rate is 6% and is applied to a \$7,000 taxable wage base. Employers are allowed a credit of up to 5.4% if a state's UI program complies with federal law and regulations, for an effective FUTA tax rate of 0.6% or \$42 per employee. This amount is credited to the federal treasury and used to offset the costs of administering the states' UI programs.

If a state does not have sufficient revenues in its Unemployment Trust Fund to pay benefits, the federal unemployment account provides an automatic advance or loan to the state.² North Carolina received its first advance in February 2009. The State currently owes the federal unemployment account \$2.5 billion.³ To ensure repayment of the advance, the FUTA tax credit is reduced by 0.3% each year⁴ until the debt is repaid; all of the revenue generated by the credit reduction is applied to the principal of the outstanding loan balance. The revenue cannot be used to pay the interest on the debt.⁵

The FUTA tax rate in North Carolina is currently \$84 per employee.⁶ Under this repayment method, the State is expected to have a positive balance in its Trust Fund account in 2018. Under the current repayment schedule, the FUTA tax rate is anticipated to be \$105 per employee in 2014, \$126 in 2015, \$147 in 2016, \$168 in 2017, and \$189 in 2018 before returning to \$42 in 2019.

CURRENT LAW: Chapter 96 of the General Statutes creates North Carolina's current UI program. The UI program provides coverage and benefits to the employees of private employers, State and local governments, Indian tribes, and nonprofit organizations.

Article 2 of Chapter 96 contains the financing system for UI. Under that system, private employers must pay a SUTA tax, or contribution, on the taxable wages of each of their employees. The taxable wage base in North Carolina is equal to 50% of the average yearly insured wage⁷. The taxable wage base for 2013 is \$20,900.⁸ Employers that are governmental or nonprofit organizations must be given the election to finance benefits by making reimbursement payments to the Division in lieu of paying a contribution.

² As of January 3, 2013, 20 states have an outstanding state loan from the Federal Unemployment Account.

³ NC's debt is the 3rd largest behind California at \$10.3 billion and New York at \$3.5 billion.

⁴ The credit reduction begins when a state has an outstanding federal loan balance 2 consecutive Januarys. The indebtedness must be eliminated by November 10th to restore the full credit for the succeeding calendar year.

⁵ North Carolina has used revenue in the Employment Security Commission Reserve Fund to pay the interest payments. Interest payments are due on September 30th of each year. The interest rate is determined annually. The interest rate for 2012 was 2.9%. The interest rate for 2013 is 2.6%.

⁶ The FUTA tax credit was reduced from 5.4% to 5.1% in 2012 and to 4.8% in 2013.

⁷ The average yearly insured wage = average weekly wage on August 1st divided by 52.

⁸ Compared to the surrounding states of AL, FL, GA, KY, MS, SC, TN, and VA, North Carolina has the highest taxable wage base. The taxable wage base in most states is in the range of \$8,000-\$9,000. Data from Upjohn Institute.

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The SUTA contribution rates vary from 0% to 5.7%. The revenue from the contribution is credited to the Unemployment Insurance Fund and used only to fund benefits. An employer's SUTA contribution rate is based on an experience-rated system. The Division of Employment Security, Department of Commerce (Division) annually computes an employer's experience rating based on the contribution credits made to and benefits charges made against the employer's account. A positive experience rating produces a lower SUTA contribution rate and a negative experience rating produces a higher SUTA contribution rate.

An employer who has a SUTA tax liability must also pay surtax equal to 20% of the SUTA contribution liability. The revenue from the surtax is credited to the Employment Security Commission Reserve Fund. The revenue from the surtax may be used for various purposes. It has been used to pay the interest on the outstanding advance and to supplement federal grants from US DOL for local Employment Security Commission offices.

Article 2 of Chapter 96 also contains the benefit system for UI. An employee with an attachment to the workforce, as evidenced by sufficient earnings and duration of employment in a 15-month base period, is entitled to some UI benefits if the employee loses a job through no fault on the part of the employee. The UI system imposes a two-year disqualification for UI benefits if the Division determines an individual lost a job for reasons of misconduct⁹ and it imposes lesser periods of disqualification for an individual who lost a job for reasons of substantial fault.¹⁰ The current UI program also allows benefits to employees who leave a job for certain causes unrelated to the job such as relocation of a spouse or health of a relative.

An individual who qualifies for UI benefits is eligible for a weekly benefit amount (WBA). The individual's eligibility is determined on a week-by-week basis. To receive a weekly benefit, an individual must be able to work, available to work, and actively seeking work. An individual who is determined to be ineligible for failure to meet one or more of these work search requirements does not receive a benefit for that week. However, the individual remains eligible for benefits in the remaining weeks if the individual meets the requirements.

In addition to UI benefits for an employee who lost a job, an employee may collect UI benefits while remaining on an employer's payroll. An individual who is payroll attached is considered unemployed when the individual works less than the equivalent of three customary scheduled full-time days in the job in which the individual has payroll attachment as a regular employee. An individual who is payroll attached does not have to meet the work search requirements to be eligible to receive benefits. The individual must be able and available to return to work when recalled by the employer. Historically, attached claims account for approximately half of UI claims, although the percentage declined to 40-45% during the recent recession.

An individual's WBA is 50% of the high-quarter wages paid to the individual in the base period, not to exceed the maximum WBA. The maximum WBA is 66 2/3% of the average weekly insured wages. The Division calculates the maximum WBA on August 1st of each year. The maximum WBA for the period August 1, 2012, through July 31, 2013, is \$535.

⁹ The two-year period may be reduced if the individual returns to work for at least five weeks, is paid cumulative wages of at least 10 times the individual's WBA, subsequently becomes unemployed through no fault, and meets the work search requirements.

¹⁰ An individual found to be in substantial fault is disqualified for a period of nine weeks. The Division may increase or decrease this number of weeks based on aggravating or mitigating circumstances. An employer's account is not charged for benefits paid due to substantial fault.

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SECTION-BY-SECTION BILL ANALYSIS: The policy changes to the UI program in House Bill ___ would accelerate the repayment of the State's \$2.5 billion to the federal unemployment account by approximately three years. The accelerated repayment means the FUTA tax rate borne by NC employers would return to 0.6% in 2016 as opposed to 2019.

SECTION 1: FUND CHANGES

Substantively, section 1 restricts the use of revenue in the Employment Security Administration Reserve Fund (renamed the Unemployment Insurance Reserve Fund) to the payment of benefits, interest payment on federal advances used to pay benefits, and principal payment on federal advances used to pay benefits. Under current law, revenues in the fund may be used to fund local offices. Section 1 also caps the balance in the Fund on January 1 of any year to the greater of \$50 million or the amount of interest paid the previous September on federal advances. Any amount in the Fund that exceeds this cap is transferred to the Unemployment Insurance Fund. The amount of interest paid in September 2012 on federal advances was \$83.9 million.

Section 1 restricts the use of revenue in the Special Employment Security Administration Fund (renamed the Supplemental Employment Security Administration Fund). Under current law, revenues in the fund may be used for improvements to buildings, the enhancement of the work environment in buildings used by the Division of Employment Security, the acquisition of real estate, buildings, and equipment required for the expeditious handling of Division business, and the temporary stabilization of federal funds cash flow. The bill limits the use of money to the temporary stabilization of federal funds and to payment of costs determined by US DOL to be ineligible for payment from the Employment Security Administration Fund. The restrictions imposed by the bill on the use of money in this fund effectively limits the funds available to administer the State's UI program to the grant monies allocated to the State by US DOL.

Administratively, section 1 moves the definitions from Article 2 of Chapter 96 to Article 1 because the definitions apply throughout the Chapter. The bill puts the definitions in alphabetical order, it cross-references many definitions to their meaning under FUTA, and it removes definitions that are not needed. It renames the four funds used to administer the UI program to more clearly reflect their purpose and it removes antiquated and redundant language:

- **Unemployment Insurance Fund.** – The revenue for this fund consists of SUTA contributions and it is used to pay benefits. Contributions credited to the Unemployment Insurance Fund are transferred daily to the State's account in the Unemployment Trust Fund. The Trust Fund is held in the federal treasury. Money in the State's account is requisitioned by the State as needed to pay benefits. As the money is requisitioned, it is transferred to the State's Unemployment Insurance Fund to pay benefits. If the State's account in the Unemployment Trust Fund is not sufficient to meet the requisitioned amount needed to pay benefits, then the State receives an advance from the federal unemployment account.
- **Unemployment Insurance Reserve Fund.** – The revenue for this fund consists of surtax revenue and its use is limited by this bill to the payment of benefits and to payment of interest and principal on federal advances.
- **Employment Security Administration Fund.** – The revenue for this fund consists primarily of grant money allocated to the State from US DOL for the administration of the State's UI program.
- **Supplemental Employment Security Administration Fund.** – The revenue for this fund consists primarily of interest paid by employers on past due contributions and its use is limited by this bill to payment of costs determined by US DOL to be ineligible for payment from the Employment

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Security Administration Fund, temporary stabilization of federal funds cash flow, security for advances, and the repayment of an overpayment of interest previously credited to this fund.

SECTION 2: SUTA CONTRIBUTION AND SURTAX CHANGES RESERVE REQUIREMENTS FOR REIMBURSABLE EMPLOYERS

Substantively, Section 2 does the following:

- Replaces the current tax schedules with a formula.
- Increases the minimum and maximum SUTA contribution rates.
- Changes the trigger that suspends the collection of the surtax.
- Simplifies the reimbursement option for employers that are governmental and nonprofit organization by treating them uniformly. Uniformity means that all of them are required to maintain a reserve account equal to 1% of the taxable wages paid by them to their employees.

Section 2 repeals the current set of stepped tax schedules that determine an employer's SUTA contribution rate and replaces the schedules with an equation based on a reserve ratio. The change results in smoother movement between experience ratings and improves the responsiveness of the system. The contribution rate may change under the equation depending on the balance in the State's account in the federal Unemployment Trust Fund on August 1st. If the amount in the Trust Fund is less than or equal to 1% of the total wages reported by all insured employers in the State for the 12-month period ending on July 31st, then the contribution rate is 2.9% minus the employer's reserve ratio percentage (ERRP). The amount in the Trust Fund is currently less than 1% of total wages.

If the amount in the Trust Fund is greater than 1% of total insured wages but less than or equal to 1.25%, then the contribution rate is reduced to 2.4% minus the ERRP. If the amount in the Trust Fund is greater than 1.25% of total insured wages, then the contribution rate may decline to 1.9% minus the ERRP. The ERRP is the employer's reserve ratio based on the employer's experience rating. The bill does not change how an employer's experience rating is determined. The move from the stepped tax schedules to an equation may result in minor contribution changes for employers between the minimum and maximum contribution rates. The increase in contributions required from employers currently at the minimum and maximum contribution rates is attributable to the increase in the minimum and maximum rates.

Section 2 increases the minimum and maximum contribution rates; it does not change the standard beginning rate of 1%. It increases the minimum contribution rate from 0% to .06%. North Carolina is the only state with a 0% minimum tax rate. Approximately 20% of North Carolina's employers have no SUTA tax liability. Since the surtax is a percentage of SUTA liability, these employers do not have a surtax liability. Under the bill, these employers will pay some SUTA tax and consequently the surtax.¹¹ The bill increases the maximum contribution rate from 5.7% to 5.76%. Approximately 10% of North Carolina employers pay SUTA at the maximum rate.

Section 2 changes the trigger for determining when the surtax must be collected. Under current law, the trigger is based upon how much is in the Employment Security Commission Reserve Fund (Reserve Fund). If the amount in the Reserve Fund equals or exceeds \$163,349,000 on August 1st, the collection of the surtax is suspended for the succeeding calendar year. This dollar amount represented 1% of

¹¹ With a taxable wage base of \$20,900, an employer's SUTA tax liability with a .06% rate would be \$12.54 per employee and the surtax liability would be \$2.51.

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taxable wages in 1984.¹² The bill changes the trigger from an amount in the Reserve Fund to an amount in the State's account in the Unemployment Trust Fund: the surtax would be suspended when the amount in the Trust Fund equals or exceeds \$1 billion.

Section 2 simplifies the provisions applicable to employers that must be given the option to reimburse the Unemployment Insurance Fund for benefits paid on their behalf as opposed to paying contributions.¹³ Under current law, most nonprofit organizations and all Indian tribes and subsidiaries of an Indian tribe that make this election must maintain a reserve account equal to 1% of the taxable wages paid to its employees. The bill imposes this same 1% reserve requirement on governmental entities, as well as all nonprofit organizations.

For governmental entities, the change essentially ensures that the funds are available in the employer's account to pay unemployment benefits when the benefits are paid. The change represents a one-time cash flow expenditure for governmental entities because not only will these entities have to pay the full reimbursement cost of benefits paid to claimants in 2012 in January of 2014, they will also have to make advance payments for the four calendar quarters beginning with the quarter that begins July 1, 2013, to build the 1% reserve. The largest quarterly advance will likely be the one made for the first quarter of the calendar year, payable in April 2014. Thereafter, governmental entities will have an annual reconciliation to maintain the 1% balance in their reserve account. The Division will determine the amount necessary to maintain the appropriate reserve balance on August 1st of each year.

Most nonprofit organizations currently maintain a 1% balance in their reserve accounts. However, some are allowed to post a surety bond or have a line of credit in lieu of the 1% reserve. This change may represent a similar cash flow issue for these nonprofits. Currently, the bonds and lines of credit are allowed for two-year periods. Effective July 1, 2013, the bill prevents a nonprofit organization from submitting a line of credit or a surety bond to secure its reimbursing election. The bill does allow current lines of credit or surety bond contracts to expire in their normal course.

Administratively, Section 2 simplifies the statutes by adopting the relevant provisions of federal law. The bill does not change coverage of employers subject to the UI program.

SECTION 3: ADMINISTRATION AND COLLECTION OF CONTRIBUTIONS

Substantively, Section 3 allows the Secretary of Commerce to compromise an employer's liability under the same limited circumstances that the Secretary of Revenue has to compromise a tax liability. When the Secretary compromises an employer's liability and the liability is at least \$1,000, the Secretary must make a written statement that sets out the amount of the liability, the amount accepted under the compromise, a summary of the facts concerning the liability, and the findings on which the compromise is based.

Administratively, Section 3 consolidates the provisions concerning the administration and collection of contributions in one Article. It does not change the current law.

SECTION 4: ADMINISTRATION OF EMPLOYER ACCOUNTS

Substantively, Section 4 greatly reduces the number of reasons for which an employer may be relieved from having benefits charged against the employer's account. This change conforms to the benefit changes made in Section 5, and more fully explained in that section of the summary.

¹² The surtax last triggered on in 2005 and has been collected since then.

¹³ FUTA requires states to give governmental and nonprofit employers a reimbursement option.

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Section 4 also amends the penalty enacted last session that prohibits the release of charges when an overpayment is made to a claimant because the employer failed to respond timely to a request for information concerning the claim. To comply with federal law, a state must impose this penalty as part of its UI program, effective on or before October 21, 2013. The penalty applies to employers that have exhibited a pattern of failing to respond. Section 4 defines a "pattern of failing" by providing that a pattern cannot be found unless the employer failures during the year prior to the request is less than 2% of the total requests made to that employer. It also moves the effective date of this provision from October 1, 2013, to October 21, 2013, the date required by federal law.

Administratively, Section 4 consolidates the provisions concerning how and when contributions are credited to an employer's account and how and when benefit charges are credited against an employer's account.

SECTION 5: PAYMENT OF BENEFITS

Substantively, Section 5 does the following:

- Requires a waiting week for each claim filed.
- Eliminates and modifies many of the reasons for which a claimant may qualify for benefits and changes the terms of the disqualification.
- Changes the calculation for how an individual's WBA is determined; reduces the maximum WBA to a statutorily set amount of \$350; and changes the calculation for an individual's partial WBA.
- Reduces the maximum duration of regular UI benefits and limits the applicability of optional extended benefits.
- Redefines "suitable work".
- Places additional benefit limitations on company officers and spouses of company officers.

Waiting week.

To obtain benefits, an individual must file a valid claim for unemployment benefits and register for work. The bill requires an individual to wait a week for each claim filed before receiving a benefit. Under current law, the waiting week is limited to one per benefit year. A valid claim is one that meets certain employment and wage standards. The bill does not change those standards:

- An individual must have been paid wages in at least two quarters of the base period.
- An individual must have been wages totaling at least six times the average weekly insured wage during the base period, which is the first four of the last five completed calendar quarters. If the individual does not have sufficient base period wages, the alternative base period is the last four completed quarters.

Qualification changes.

For an individual that files a valid claim, the Division must determine whether the individual qualifies for benefits. Qualification for benefits is determined based on the reason for separation from employment. The bill makes the following qualification changes:

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- Reduced work hours. – An individual may qualify for benefits if the individual's work hours have been reduced by more than 50% as part of a unilateral and permanent reduction of work hours. Under current law the reduction in work hours need only be 20%.¹⁴
- Disciplinary suspension. – An individual may qualify for benefits if the individual has been placed on disciplinary suspension for more than 30 consecutive days. Under current law the suspension need only be for 10 consecutive days. The issue becomes whether the reason for suspension is a disqualifying reason for benefits.
- Good cause.¹⁵ – The bill eliminates all but two of the reasons for which an individual could voluntarily quit work and still qualify for UI benefits. Those two reasons are domestic violence and military spousal relocation. The reasons eliminated include: bankruptcy; impending closure; spousal relocation; disability or other health concern, whether or not it is related to work; disability or health concern of minor child, aged or disabled parent, or disabled immediate family member; inability to accept work during a particular shift because of concerns related to child care, elder care, or care of a disabled family member.
- Substantial fault.¹⁶ – The bill eliminates substantial fault. Under substantial fault, an individual may qualify for a reduced number of weeks of UI benefits if the reason for separation included fault on the part of the individual, but the fault did not rise to the level of misconduct. Under the bill, an individual would either qualify for benefits, or not qualify; there would be no qualifying for a reduced number of weeks of benefits.

In addition to the reasons given above for disqualification of benefits, an individual may be disqualified for leaving work without good cause attributable to the employer, for misconduct, or for failing to secure the necessary licenses, permit, bond, or surety required for the job. The length of the disqualification period may be two years, or it may be less. The current law gives the Division a lot of discretion in defining the length of the disqualification. The bill would remove this discretion. An individual would either qualify for the full duration of benefits, or not qualify for the benefits at all. And if an individual is disqualified for benefits, the disqualification only applies to that claim.

Weekly benefit amount.

The Division must determine the WBA and the duration of benefits a qualifying individual is entitled to receive. The bill makes the following changes in the calculation of the WBA:

- Changes the calculation of the WBA from 50% of the individual's high-quarter wages in the base period, not to exceed the maximum WBA, to 50% of the individual's average weekly wage in the last two quarters of the base period.¹⁷ North Carolina's average weekly benefit (AWB) for 2011 was \$291.¹⁸ The Upjohn Institute report noted that wages for the two quarters immediately preceding unemployment were typically 66.4% of the high-quarter wages. Based on that assumption, this change is expected to reduce aggregate UI benefits by 33.6%. The actual

¹⁴ The bill does not change the 15% reduction of work pay as a reason for qualifying for benefits if the reduction is part of a unilateral and permanent reduction of work pay.

¹⁵ Benefits not charged to employer's account.

¹⁶ Benefits not charged to employer's account.

¹⁷ The methods states use to determine WBA vary greatly. At least half of the states use the high-quarter method. Other methods used include: multi-quarter, annual wage, average weekly wage formula.

¹⁸ That amount was slightly higher than the AWB in the surrounding states of AL (\$204), FL (\$232), GA (\$268), KY (\$287), MS (\$191), SC (\$238), TN (\$238), and VA.

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number of claimants impacted is indeterminable; it would impact any individual whose quarterly wages are reduced in the two quarters preceding an unemployment claim.

- Sets the maximum WBA in statute at \$350.¹⁹ Currently, the Division calculates the maximum WBA annually based on 66 2/3% of the average weekly insured wages on August 1; the maximum WBA in the State today is \$535.²⁰ An estimated 21.7% of weekly claims checks exceed \$350; of those, approximately 17% are at the maximum amount. North Carolina's maximum WBA is 70% higher than the average of the following eight states compared in the Upjohn Institute report for 2011: AL (\$265), FL (\$275), GA (\$330), KY (\$415), MS (\$235), SC (\$326), TN (\$275), and VA (\$378).
- Changes the base for determination of the disregard for partial earnings from 10% of the individual's AWW in the high-quarter to 20% of the individual's WBA.

Duration of regular benefits.

The duration of regular benefits in North Carolina ranges from 13 weeks to 26 weeks²¹, depending upon the total benefit amount the individual is entitled to receive. The bill ties the duration of regular benefits to the seasonal adjusted statewide unemployment rate, as determined by the US DOL. The duration could change twice a year: January 1 and July 1. The bill also reduces the maximum number of weeks from 26 to 20.²² Based on these two changes, the duration of benefits would vary as follows:

<u>Seasonal adjusted UI rate</u>	<u>Minimum number of weeks</u>	<u>Maximum number of weeks</u>
Less than or equal to 5.5%	5	12
Greater than 5.5% up to 6%	6	13
Greater than 6% up to 6.5%	7	14
Greater than 6.5% up to 7%	8	15
Greater than 7% up to 7.5%	9	16
Greater than 7.5% up to 8%	10	17
Greater than 8% up to 8.5%	11	18
Greater than 8.5% up to 9%	12	19
Greater than 9%	13	20

Weekly certification.

Once an individual qualifies for UI benefits, the individual must meet weekly work search eligibility requirements to receive the benefit. The individual must submit a certification each week attesting that the individual meets the work search requirements. If an individual does not meet the eligibility requirements, the individual is ineligible to receive a benefit until the reason for the ineligibility ceases

¹⁹ An individual annual wages would need to be \$36,400 to qualify for a maximum benefit of \$350.

²⁰ An individual's annual salary would need to be \$55,640 to receive the maximum benefit of \$535.

²¹ The average duration of regular UI benefits in December 2012 was 16.3 weeks.

²² Upjohn Institute reports that from 2006-2011, 43% of claimants exhausted their maximum eligibility of 26 weeks. During that time period, 43% of claimants would have been affected by a reduction in the number of weeks.

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to exist. The work search requirements are that the individual must be able to work, available to work, actively seeking work, and accepting suitable work. The Department of Commerce has made some administrative changes in this area, and the bill makes some statutory changes in it.

Last biennium²³, the General Assembly enacted legislation to place the Employment Security Commission as a division under the Department of Commerce. Through the merger process, the Division of Employment Security and the Division of Workforce Solutions have agreed in a Memorandum of Understanding (MOU) executed in November 2012 as to how each division will support the common goal of serving UI claimants who are in need of financial and job-seeking assistance. As part of that MOU, claimants will be encouraged to file UI claims remotely. The Division of Workforce Solutions will be the lead division that assists UI claimants with job search, retraining, and other support. As part of the re-employment goals, new UI claimants will be required to have an individual interview with someone from the Division of Workforce Solutions within the first four weeks of receiving an initial UI benefit. The purpose of the individual visit is to verify the claimant's work search, schedule claimants to participate in an employability assistance process, and identify those claimants that need subsequent on site employability interviews. If an individual fails to come, the individual's UI benefit may be stopped.

The bill makes the following statutory changes in the work search requirements:

- It defines "suitable work" as any job paying 120% of the individual's WBA after the first 10 weeks of benefits.
- It eliminates the part-time suitable work exception. Under current law, if an individual is unemployed from a part-time job, the individual is not required to accept full-time employment.
- Under current law, an individual is considered to meet the work search requirements if the individual is in school. The bill restricts this provision by limiting it to enrollment in a training program approved by the Division, as required under FUTA.

Lastly, the bill places additional benefit restrictions on company officers and spouses of company officers. Under current law, an individual is disqualified from receiving benefits if the individual is self-employed and can reasonably return to work. Also, an individual or the individual's spouse is disqualified from receiving benefits if the individual is unemployed because the individual's ownership share of the employer was voluntarily sold and the individual held 5% or more of the outstanding shares of voting stock, or was a partner, or was the sole proprietor. Under the bill, a corporate officer that qualifies for benefits would be limited in the duration of benefits to six weeks.

Administratively, Section 5 consolidates the provisions concerning benefits in one Article. Except as otherwise noted in the summary, it does not intend to change the other provisions of current law.

SECTION 6: EXTENDED BENEFITS

Under federal law, a state must offer extended benefits during times of high unemployment in the state.²⁴ Extended benefits are typically funded 50% by the State and 50% by the federal government. Federal law sets one definition of high unemployment that a State must follow. It also provides optional definitions that may trigger extended benefits earlier than the mandatory definition. North Carolina's current law includes both the required trigger and the optional triggers.

²³ SL 2011-145 and SL 2011-401.

²⁴ North Carolina "triggered off" extended benefits in May 2012.

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The duration of extended benefits is typically equal to 50% of the total amount of regular benefits. By limiting the number of weeks of regular benefits, the bill indirectly reduces the number of extended benefits an individual may receive. Section 7 of the bill would also make one other change to the applicability of extended benefits in North Carolina by providing that the optional triggers would not "trigger on" unless the federal government has agreed to pay 100% of those extended benefits.

SECTION 7: ADMINISTRATION OF BENEFITS

Substantively, Section 7 does two things:

- It changes the administration of UI benefits by limiting the ability of employers to file attached claims on behalf of their employees.
- It authorizes the Division to collect fraudulent overpayments through attachment and garnishment.

Under current law, an employer may file a claim for an employee that it intends to keep on its payroll. That employee must be able to work for the employer and available to return to work for that employer whenever that employer calls the individual back to work. Otherwise, the employee does not have to meet the weekly certification requirements of engaging in work search efforts.

Historically, attached claims account for approximately half of UI claims, although the percentage declined to 40-45% during the recent recession. Although it is difficult to determine what employers file attached claims, it appears that those most likely to do are the employers engaged in manufacturing and construction. It also appears that a large amount of the current indebtedness can be attributed to employers who have reached the maximum contribution rate and that those employers may be largely related to manufacturing and construction. With the current limitations on the computer capabilities at the Division, a more accurate analysis is not available.

Some attached claims are filed for one or more weeks of unemployment. Under the regulations previously issued by the Employment Security Commission²⁵, an employer that files attached claims for one or more weeks must furnish the Division with a definite date when work will become available for the claimant. This period may not extend for more than six weeks unless the time period is extended by the local office.

Other attached claims are filed for days within a week. For example, an individual employed by a company that builds roads may file attached claims for employees when the weather outside prohibits work for less than three customary scheduled full-time days during the work week. This unemployment is known as partially unemployed. Under current law, an individual who is partially unemployed must serve one waiting week per benefit year. Under the bill, a claimant must serve a waiting week for each claim. That change effectively eliminates partially unemployed claims.

Under the bill, only certain employers will be allowed to file attached claims, and there are restrictions on how those claims are processed:

- Only employers that have a positive account balance would be allowed to file attached claims. If an employer that wished to file an attached claim had a negative account balance, the employer would have to make a voluntary contribution to the Unemployment Insurance Fund in an amount sufficient to bring its account balance to zero or better.

²⁵ Regulation 10.15 and 10.16.

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- An employer would have to immediately reimburse the Unemployment Insurance Fund for the full cost of UI benefits paid to the employee through the attached claim.
- An employer could only file an attached claim once a year for each employee, and the duration of the attached claim could not extend beyond six weeks.

Section 7 adds attachment and garnishment to the collection tools available to the Division to recover fraudulent overpayments. The Division requested this ability. A fraudulent overpayment is one that is made based on a finding that the claimant, or another individual acting in the claimant's behalf and with the claimant's knowledge, has knowingly made a false statement or representation or failed to disclose a material fact for the purpose of obtaining or increasing an unemployment benefit.

Administratively, Section 7 consolidates the provisions governing the administration of UI benefits in one Article.

SECTION 8: LOCAL OFFICES

The US DOL allocates grant money to the State to administer the UI program. Some of this grant money may be used to operate local offices. The State has historically appropriated money from the Employment Security Administration Reserve Fund to finance additional local offices. The amount appropriated in the past to fund local offices has been \$19.5 million. North Carolina currently operates 90 local offices. By comparison, South Carolina operates 56 and Virginia operates 39. Section 1 of the bill restricts the use of the money in the Unemployment Insurance Reserve Fund so that continued appropriations may not be made from that fund to finance local offices. The restriction may result in the consolidation of local offices. Section 8 of the bill sets general parameters the Department of Commerce must consider as it determines the appropriate number and location of local offices.

SECTION 9: CONFORMING CHANGES

Section 9 makes conforming changes to other statutes.

SECTION 10: JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE

Section 10 establishes a Joint Legislative Oversight Committee on Unemployment Insurance. The Committee consists of eight members, four appointed by the Speaker of the House of Representatives and four appointed by the President Pro Tempore of the Senate. The Committee expires in 10 years. The Committee is authorized to do the following:

- Study the unemployment insurance laws and the administration of those laws.
- Review the State's unemployment insurance laws to determine which laws need clarification, technical amendment, repeal or other change to make the laws concise, intelligible, and easy to administer.
- Monitor the payment of the debt owed by the Unemployment Insurance Trust Fund to the federal unemployment account.
- Review and determine the adequacy of the balances in the Unemployment Trust Fund and the Unemployment Insurance Reserve Fund.
- Study the workforce development programs and reemployment assistance efforts of the Department of Commerce.

SECTION 11: EFFECTIVE DATE:

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The bill would become effective July 1, 2013. Changes made by the act to unemployment benefits apply to claims for benefits filed on or after July 1, 2013.²⁶ Changes made by the act to require an account balance by an employer that is a governmental entity or a nonprofit organization and that elects to finance benefits by making reimbursement payments in lieu of contributions apply to advance payments payable for calendar quarters beginning on or after July 1, 2013. Changes made by the act to the determination and application of the contribution rate apply to contributions payable for calendar quarters beginning on or after January 1, 2014.

²⁶ Congress extended the Emergency Unemployment Compensation program (EUC) from January 2, 2013, to January 1, 2014, in the *American Taxpayer Relief Act of 2012*. The program provides claimants up to 47 additional weeks of benefits, financed by the federal government. A state's participation in the program is optional. North Carolina is currently a party to the agreement. The State can terminate the agreement with 30 days' notice. To participate in the agreement, a state cannot change the mathematical formula used to determine weekly benefit amounts in a manner that will result in the average WBA being less than the average WBA was in June 2010. The bill would violate this "non-reduction" rule, effective July 1, 2013.