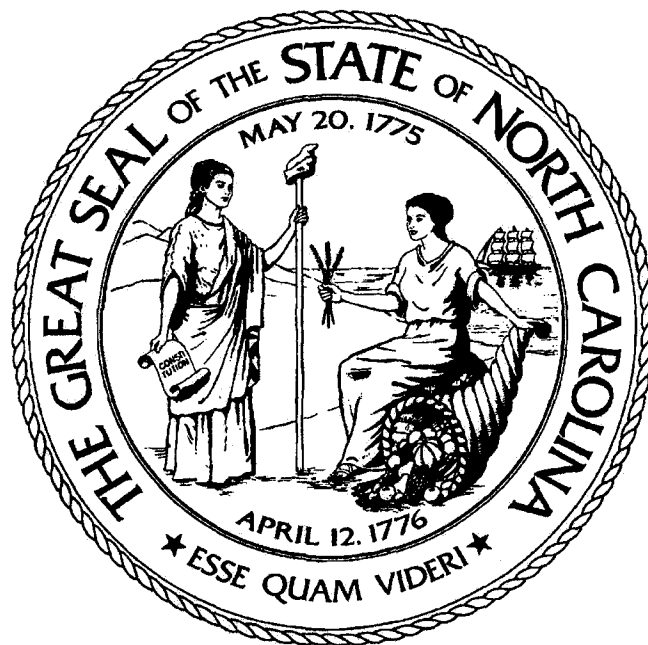
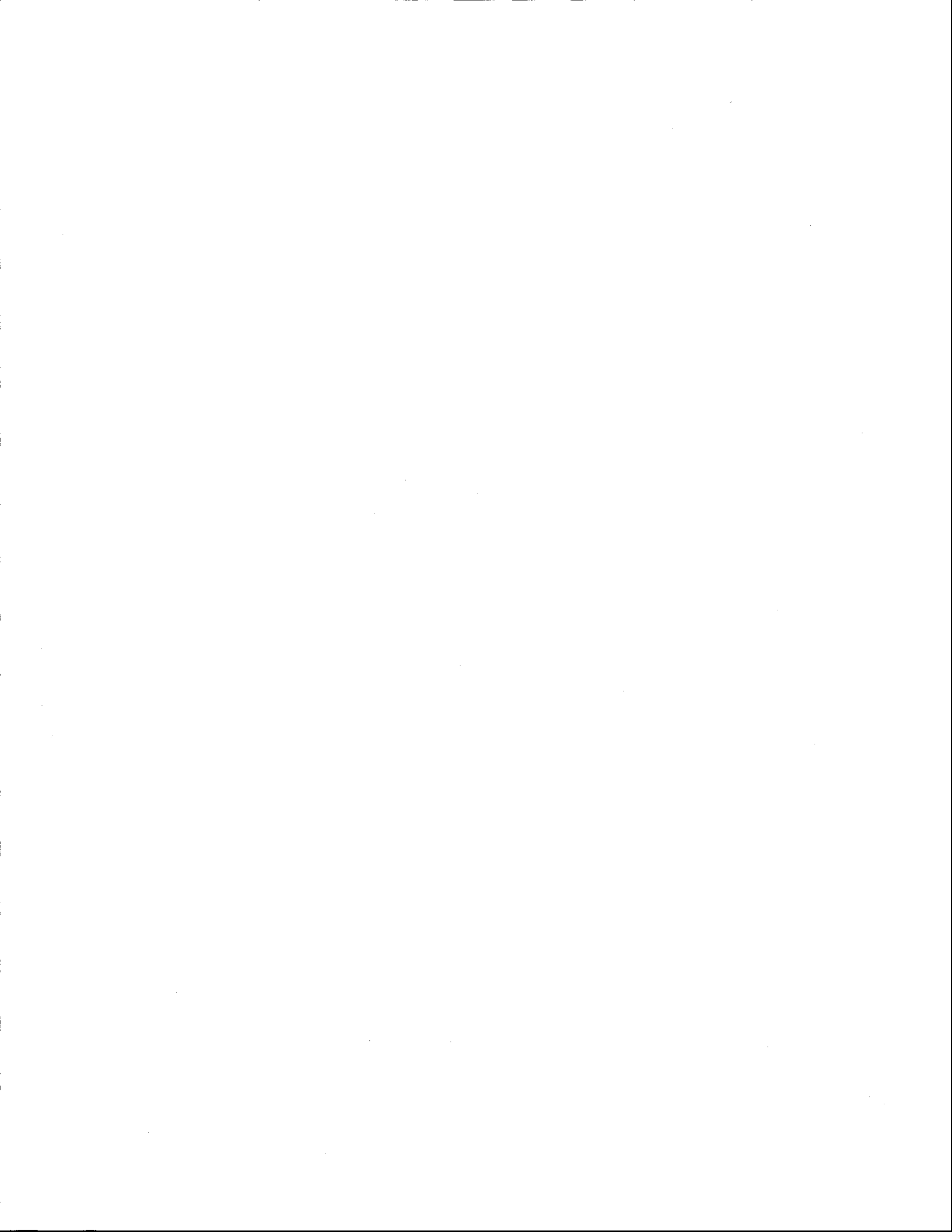


**2011-2012
HOUSE UNEMPLOYMENT FRAUD
TASK FORCE**



**REPORT TO THE 2011-2012
GENERAL ASSEMBLY OF NORTH CAROLINA
2012 SESSION**



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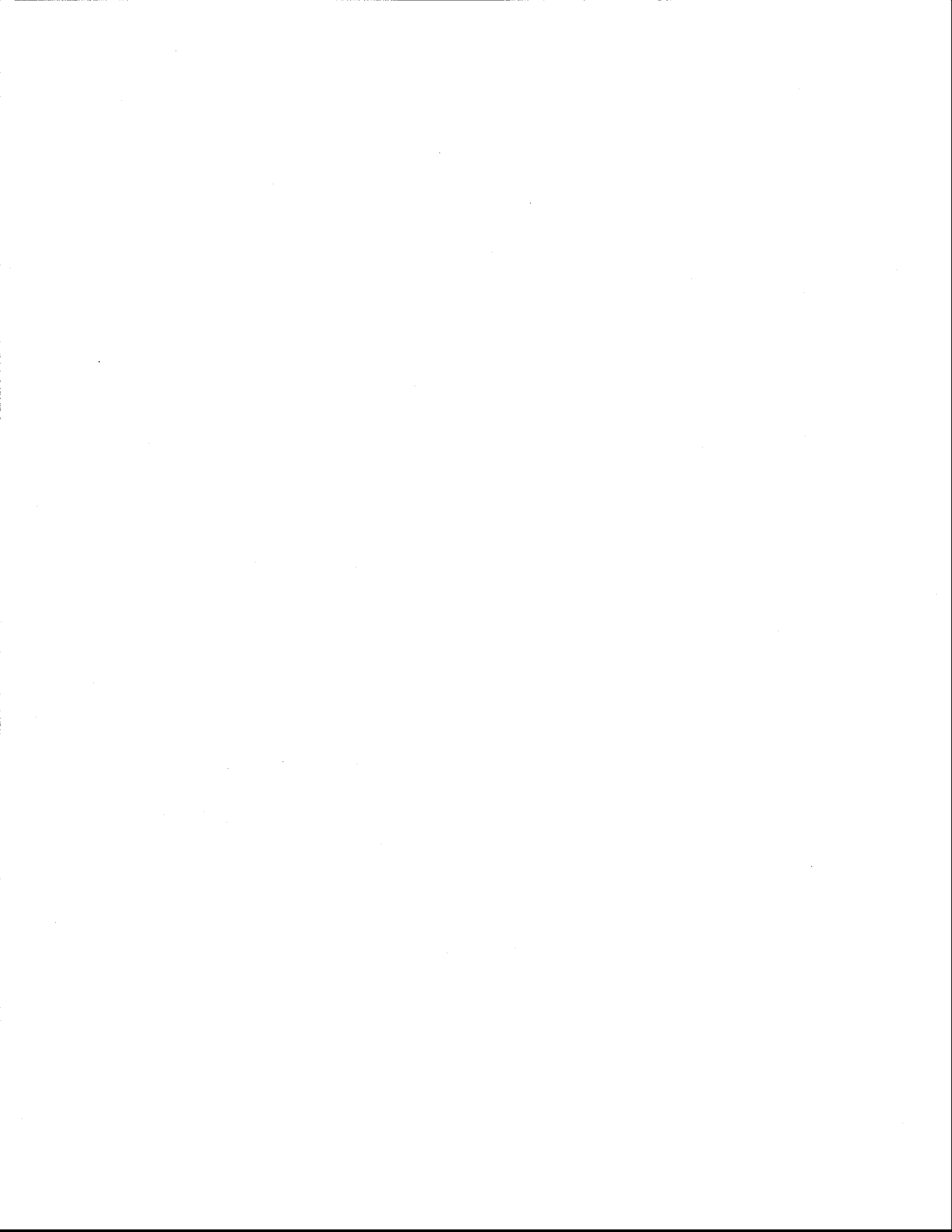
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- A. . Authorization
- B. Meeting Agendas

¹All of the meeting handouts, including Power Point presentations, may be accessed online in PDF format at the Unemployment Fraud Task Force Committee website: <http://www.ncleg.net/committees/>





HOUSE UNEMPLOYMENT FRAUD TASK FORCE
State Legislative Building
Raleigh, North Carolina 27603

Representative Marilyn Avila, Co-Chair

Representative G. L. Pridgen, Co-Chair

May 9, 2012

TO THE HONORABLE MEMBERS OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES:

The House Unemployment Fraud Task Force submits to you for your consideration its report pursuant to G.S. 120-19.6(a1) and Rule 26 of the Rules of the House of Representatives of the 2011 General Assembly.

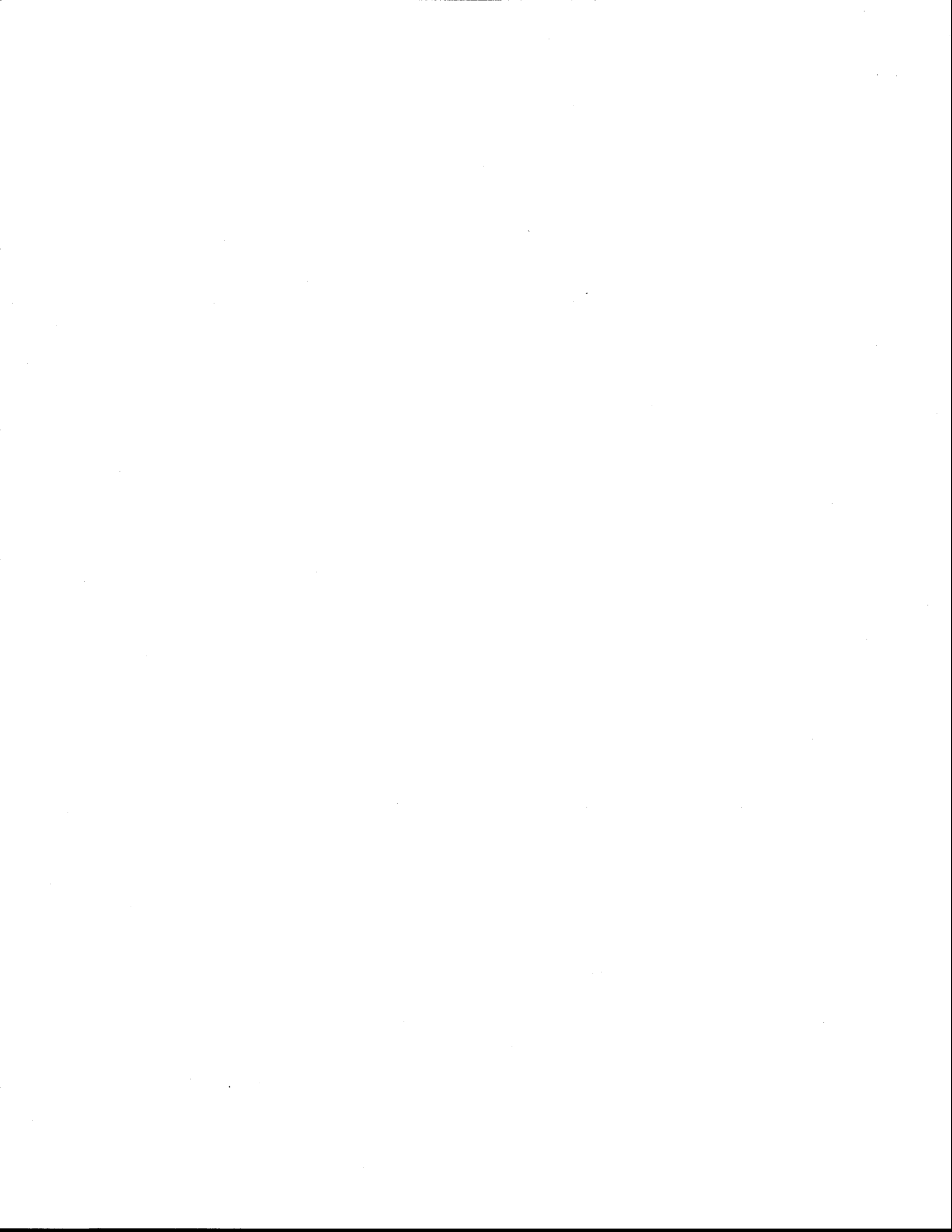
Respectfully Submitted,

Marilyn W. Avila

Rep. Marilyn Avila, Co-Chair

G. L. Pridgen

Rep. G. L. Pridgen Co-Chair



2011-2012

HOUSE
UNEMPLOYMENT FRAUD TASK FORCE COMMITTEE

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Phyllis Pickett, Staff Attorney
Kristin Walker, Fiscal Analyst



PREFACE

The Speaker of the House of Representatives established the House Unemployment Fraud Task Force pursuant to G.S. 120-19.6(a1) and Rule 26 of the Rules of the House of Representatives of the 2011 General Assembly on March 15, 2012. The Committee is charged to study issues relating to unemployment and unemployment fraud in North Carolina and to recommend legislative action if needed to address unemployment fraud prevention and recovery. The Committee consists of nine members appointed by the Speaker of the House of Representatives. The co-chairs for 2011-2012 are Representative Marilyn Avila and Representative G. L. Pridgen.

A copy of the authorization for the House Unemployment Fraud Task Force is included in Appendix A. A committee notebook containing the Committee minutes and all information presented to the Committee is filed in the Legislative Library and may also be accessed online at the Committee's website: <http://www.ncleg.net/committees/>. As part of its work, the Committee compiled a vast array of resources that may be accessed online at its website. Those resources include unemployment insurance claims manual, adjudicator's determination forms, appeals decision forms, Commission decision forms, precedent decisions manual, ESC interpretation manual, and a glossary of unemployment insurance terms.



COMMITTEE PROCEEDINGS

The House Unemployment Fraud Task Force, established by the Speaker of the House of Representatives on March 15, 2012, met three times prior to the convening of the 2012 Regular Session of the 2011 General Assembly. Appendix B contains a copy of the Committee's agenda for each meeting. All of the materials distributed at the meetings may be viewed on the Committee's website.

Congress established the Unemployment Insurance Program (UI Program) in 1935 as Title III of the Social Security Act. The UI Program provides temporary cash benefits to workers who lose their jobs through no fault of their own and also serves to stabilize the economy in times of economic recession. It is a complex program jointly administered by the U.S. Department of Labor (USDOL) and the states. States have wide latitude to administer their UI Programs so long as their programs stay within the guidelines established by federal law.

The UI Program is funded through federal and state taxes levied on employers. The federal unemployment tax (FUTA) rate is 6% and is imposed on wages up to \$7,000 a year. The FUTA funds the administrative costs of the UI Programs and other related federal costs of the UI Program. North Carolina's state unemployment tax (SUTA) rate¹ varies from 0% to 6.84% based upon the employer's experience rating and is imposed on wages up to \$20,400² for the 2012 taxable year. The contributions paid by employers are credited to the State Unemployment Trust Fund (Trust Fund) and may be used only to pay claimant benefits. When states lack the funds to pay unemployment insurance

¹ North Carolina also imposes a tax on contributions at the rate of 20% of the contributions due in any calendar year when the Employment Security Reserve Fund does not equal or exceed \$163,349,000. The Reserve Fund has fallen below this amount since the 2005 calendar year. The revenue from this tax is credited to the Reserve Fund and its use is not restricted. The State made the interest payment on the federal loan of \$78.8 million in September 2011 from monies available in the Reserve Fund.

² This amount is indexed annually.

benefits, they may obtain a loan, or an "advance," from the federal government. North Carolina received its first advance from the federal treasury to finance the benefits payable from the Trust Fund in February 2009. As of March 29, 2012, North Carolina had an outstanding loan balance of \$2.8 billion.³

The health of a state's unemployment trust fund depends, in part, on the current economic conditions, the amount of taxes collected from employers, and the ability of the state to control its benefit payments by accurately determining individuals' eligibility for UI benefits in a timely manner.⁴ The General Assembly has little control over the current economic conditions. With regard to tax revenues, the 2012 General Assembly directed the Department of Commerce to contract with an independent consulting firm specializing in unemployment insurance and employment security reform to obtain recommendations on what tax structure changes would be fair to employers and how these revenues and other financial options might be used in servicing and liquidating the State debt incurred to pay unemployment insurance.⁵ The charge of the House Unemployment Fraud Task Force is, in part, to determine if legislative action is needed to address the accuracy of benefit payments.⁶

The Committee began its work by learning the mechanics of how unemployment benefits are claimed and administered. It invited the professionals from the Division of Employment Security (DES), Department of Commerce, who have worked in their respective areas for years, to explain how the claims adjudication process works at both the local offices and the central office, how the Integrity Unit seeks to ensure benefit payment control, how appeals are administered at both the appeals hearing level and

³ Thirty states have an outstanding loan from the federal government. Only three states have a larger loan balance than North Carolina: California, New York, and Pennsylvania.

⁴ GAO-02-697 Report on "Unemployment Insurance, Increased Focus on Program Integrity Could Reduce Billions in Overpayments." July 2002.

⁵ Senate Bill 99, S.L. 2011-10.

⁶ The Committee acknowledges that fraud is also an issue for employers. The Committee understands the issue of "SUTA dumping," a tax evasion scheme where shell companies are formed to obtain a lower UI tax rate, received increased federal and state scrutiny in the mid-2000s and that the Division of Employment Security has a program to address SUTA dumping.

the Commission level, and how employment tax contributions are enforced. The Committee learned DES paid \$1.4 billion in regular UI benefits in 2011 and \$8.5 billion in federally funded benefits. DES paid UI benefits to 549,199 individuals, adjudicated more than 136,000 claims, and held more than 54,000 appeals in 2011. The average duration of benefits in 2011 was 16.3 weeks compared to 13.9 weeks in 2008. The average UI benefit amount in 2011 was \$280.19 compared to \$277.00 in 2008. The unemployment rate in 2011 was 10% compared to 8.5% in 2008.

The Committee learned the State is not alone as it looks at the accuracy of benefit payments. In 2002, the United States General Accounting Office issued a report on the unemployment insurance program and the need for an increased focus on program integrity.⁷ The key component to program integrity is the accuracy of benefit payments. Improper payments occur when funds go to the wrong recipient; when the right recipient receives the wrong amount; and when documentation is not available to support a UI claim. Not all improper payments are fraudulent, but all improper payments weaken the integrity of the UI Program and the viability of the State's Trust Fund.

Since 2008, there has been increased federal emphasis on preventing, detecting, and recovering improper payments. The focus of President Obama's Executive Order 13520, issued November 23, 2009, was the reduction of improper payments in major programs administered by the federal government, including the UI Program. In response to the level of improper payments in the UI Program, USDOL developed a strategic plan to address the root causes of improper payments. The plan involves new performance measures for the states, increased funding of new tools and technology, and a focus on the root causes leading to improper payments. Gay Gilbert, Administrator, Office of Unemployment Insurance, USDOL, and Dale Ziegler, Deputy

⁷ See footnote #4.

Administrator, Office of Workforce Services, USDOL, identified three root causes leading to improper payments at the April 3, 2012, meeting:

- Claimants continuing to claim benefits after returning to work.
- Untimely and insufficient separation information from employers and third party administrators.
- A gap in employment service registration.

They offered several suggestions to address these root causes:⁸

- Increased use of the National Directory of New Hires.
- Enhanced cross-matching procedures.
- Improved claimant and employer messaging campaigns.
- State and business implementation of the State Information Data Exchange System (SIDES) and State marketing of SIDES to employers and third-party administrators.
- State implementation of the Unemployment Insurance Compensation Debt of the Treasury Offset Program (TOP-UIC).
- Automated SUTA detection systems to detect employers engaged in UI tax rate manipulation.
- Detection and enforcement activities to address workers mistakenly classified by an employer as a non-employee.
- Implementation of the three provisions of the Integrity Act, included as part of the Trade Adjustment Assistance Extension Act of 2011:
 - Mandatory penalty assessment of 15% on UI fraud claims.
 - Prohibition on non-charging of an employer's account if an overpayment is made due to the employer's failure to respond timely and adequately to the agency.

⁸ Presentation made by Gay Gilbert and Dale Ziegler on April 3, 2012.

- Requirement for employers to report rehired employees to the National Directory of New Hires within 60 days.

The Committee also heard a presentation from Doug Holmes, President of the UWC-Strategic Services on Unemployment & Workers' Compensation, regarding best state practices for improper payment prevention, detection, and recovery. His observations included the following list of suggestions for North Carolina:⁹

- Increased system integration between the State and USDOL.
- Increased use of withholding of benefits to collect overpayments. In North Carolina, an overpayment may be withheld from future UI benefits.
- Extension of the period in which overpayments may be collected and in which fraud may be identified and prosecuted.
- Increased criminal penalties for overpayments.
- Improved use of cross-matches that identify individuals working while receiving UI benefits.
- Dedicated staffing and system resources to overpayment prevention, detection, and recovery.
- Increased outreach to employers to exchange information electronically to identify issues.

At its April 18, 2012, meeting, the Committee reviewed both federal and State legislation enacted in 2011 that influenced unemployment law. Congress enacted the Trade Adjustment Assistance Extension Act of 2011 in October 2011. That Act included legislative language suggested by USDOL in June of 2011 to improve program integrity within the UI Program. The General Assembly enacted Senate Bill 532, which made several changes to North Carolina's UI Program.

The Trade Adjustment Assistance Extension Act of 2011 contained three key integrity provisions recommended by USDOL that will require action by the states:

⁹ Presentation made by Doug Holmes on April 3, 2012.

changes to the New Hire Directory, a prohibition on non-charging of employer accounts when an improper payment is made because the employer failed to respond adequately and timely, and a 15% penalty imposed on fraudulent overpayments. The changes to the New Hire Directory must be made this year; the other two changes do not need to become effective until October 21, 2013.

New Hire Directory. - To address the gap in employment service registration, the federal law requires states to expand the definition of a "newly hired employee" to include a rehired employee who was separated for at least 60 days. It also requires employers to enter the start date of employment when the employer submits the information to the New Hire Directory. The New Hire Directory was created years ago to assist states with the collection of child support payments. The Directory is administered by the Department of Health and Human Services. The directory is also a valuable tool for unemployment insurance programs because it allows the agency to cross-check claimants with new hires. This information assists the agency with the detection of overpayments being made to individuals who have returned to work. States are required to make the necessary statutory changes to its New Hire Directory within two months after the latest legislative session ends.

Prohibition on Non-Charging of Employer Accounts. - To address the untimely and insufficient separation information provided by employers and third party administrators to the agencies, the federal law requires states to enact a provision prohibiting the non-charging of an employer's unemployment insurance account when an improper payment is made because of the employer's failure to respond timely or adequately to a written request for separation information. In most states, an employer's state unemployment tax rate is based upon an experience rating whereby employers that have more claims or charges against their unemployment insurance account have a higher tax rate. Under current law, benefits paid to a claimant erroneously may not be charged to the employer's account. Under this provision, the benefits would be charged

to the employer's account if the erroneous payment is made because the employer failed to respond timely and adequately to the agency. This provision points to a trend whereby employers are expected to improve the quality of information provided to state employment agencies at the front end of the UI claim process, rather than waiting until a hearing to provide details. Although a state may impose a stricter standard, it must impose the minimal federal standard by October 21, 2013.

Monetary Penalty Assessment. - To address claimants who fraudulently continue to accept unemployment benefits after returning to work, the federal law requires states to impose a penalty on the claimant equal to 15% of the amount of erroneous overpayment if the agency determines that the overpayment is due to fraud. Under G.S. 96-18(a), a fraudulent overpayment is one that results from a person's false statement or representation *knowing* it to be false or from a person *knowingly* failing to disclose a material fact to obtain or increase a benefit received. The money collected from the penalty is payable to the State Unemployment Trust Fund and its use is limited to the payment of unemployment compensation benefits. States may enact a larger penalty amount and may use the additional amount for whatever purpose it desires. The 15% federal mandatory penalty must be in place by October 21, 2013.

The General Assembly enacted Senate Bill 532 on July 26, 2012.¹⁰ Senate Bill 532 had four operative parts:

- It created the Division of Employment Security within the Department of Commerce and transferred the functions of the Employment Security Commission to that Division.
- It made the Division subject to rulemaking under Article 2A of chapter 150B of the General Statutes.
- It made substantive changes to the employment security laws.
- It made conforming changes to the employment security laws.

¹⁰ S.L. 2011-401.

On June 30, 2011, the Governor vetoed the bill. In the Governor's Objections and Veto Message, she stated USDOL informed the administration that a lack of conformity between the bill and federal law could result in a loss of money for the State's unemployment insurance program and a reduction in the FUTA tax credit.¹¹ A state's law must conform to the provisions of the federal unemployment compensation laws in order for employers in a state to be eligible for a credit against the FUTA tax and for the state to be eligible to receive an administrative grant to operate its unemployment compensation programs.

The General Assembly overrode the Governor's veto on July 26, 2011. After passage of the bill, the Employment Security Commission informed the General Assembly by a letter dated October 12, 2011, of its intention to suspend the provisions of the bill determined by USDOL to be noncompliant with federal law. G.S. 96-19(b) gives DES the authority to suspend enforcement of a provision upon receiving notification from USDOL that the provision is noncompliant with the requirements of federal law. The suspension may be in effect until the Legislature next has an opportunity to reconsider the provisions purported to be noncompliant with federal law. USDOL noted the following concerns:

- The legislation expanded the time for an employer to provide information required to protest a claim from 10 days to 30 days. The extension of time would make it virtually impossible for the agency to make timely determinations under the standards set by federal regulations.¹²
- An individual is totally disqualified from receiving benefits if DES determines the individual was discharged for misconduct connected with the

¹¹ Federal law provides a credit against the FUTA tax rate of up to 5.4% for states that have an approved UI Program. The credit may be reduced by 0.3% a year if a state has an outstanding loan. Currently, the FUTA tax credit for NC employers is 5.1% because of NC's outstanding loan balance to the federal government.

¹² For most intrastate claims, federal regulations require that a state pay at least 87% of its claims within 14 days of the end of the first compensable week, or 21 days for states that do not have a waiting week requirement, and 93% of such claims within 35 days.

work. The legislation expanded the definition of "misconduct connected with the work" to include both of the following:

- Arrest for or conviction of certain offenses. The new definition did not require that the criminal conduct be connected with the individual's work.
- Failure to adequately perform employment duties after being warned. In order to be the basis for a disqualification to receive unemployment benefits, unsatisfactory job performance must be the result of intentional behavior or gross negligence, and must be egregious.
- The legislation allowed the parties to tender stipulation of the ultimate issues in cases pending on appeal to the agency. While a stipulation of facts might be acceptable, a stipulation of the issues vitiates the agency's federally-mandated responsibility to apply the unemployment law to specific facts. USDOL also recommended that any procedure or process by which an appeals referee or hearing officer accepts a stipulation of fact should be recorded.

Senate Bill 532 also created a Board of Review¹³ to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Employment Security Section and the Employment Insurance Section. The annual salaries of the three-person board are to be set by the General Assembly in the current Operations Appropriations Act. The Current Operations and Capital Improvements Appropriations Act of 2011 did not set the salaries for the members of the Board of Review.

The Committee considered the differences between overpayments and fraudulent overpayments. G.S. 96-18(a) makes it a Class 1 misdemeanor for a person to make a false statement or representation *knowing* it to be false or to *knowingly* fail to

¹³ G.S. 96-4(b).

disclose a material fact to obtain or increase any UI compensation benefit. One of the leading causes of overpayments is a person continuing to claim benefits after returning to work. The Committee learned that proving a person *knowingly* made a false statement is sometimes difficult when the overlap of benefits and earnings is for a limited period of time. Claimants who return to work, but don't receive a paycheck for a period of two to four weeks after starting employment, sometimes fail to correctly answer the question asked regarding weekly earnings. The Committee spent considerable time discussing how to better educate claimants to answer the weekly questions correctly.

The difference between whether an overpayment is fraudulent or not makes the following differences in how the overpayment may be recovered:

- A person who has been found to have obtained a benefit fraudulently is not entitled to receive benefits for a period of 52 weeks.¹⁴
- DES has 10 years to recover a fraudulent overpayment; it has only three years to recover an overpayment.¹⁵
- DES may recover a fraudulent overpayment by deducting 100% of the overpayment from future benefits payable to the person; it may deduct only 50% from future benefits for a non-fraudulent overpayment.¹⁶

The Committee learned more about the Unemployment Insurance Compensation Debt of the Treasury Offset Program (TOP-UIC) from Thomas Kobielus, with the US Treasury Department, and Becky Park, Co-Project Manager for TOP-UIC, US Treasury Department.¹⁷ The TOP compares payee names and taxpayer identification numbers on federal payment certification vouchers to names and taxpayer identification numbers in TOP's debtor database. When a match occurs, TOP intercepts, or "offsets," all or part of a payee's eligible Federal or state payments. Congress first permitted UI compensation

¹⁴ G.S. 96-18(e).

¹⁵ G.S. 96-18(g)(1) and (2).

¹⁶ G.S. 96-18(g)(3)c. and (3)d.

¹⁷ [..April 18\TOP UI Presentation NC- revised 4-17 2012.pdf](#)

debts and uncollected contributions to be recovered under TOP in 2008.¹⁸ The initial legislation limited the types of UI debts that could be recovered through TOP. However, in December 2010, Congress removed many of the limitations.¹⁹ Today, the definition of "covered unemployment compensation debt" is no longer limited to overpayments due to fraud and any associated penalties or interest may be recovered through TOP if the UI compensation debt is due to a person's failure to report earnings or delinquent contributions. In addition, the term is no longer limited to debts that remain uncollected for 10 years.

To participate in the TOP-UIC, a state must have a Safeguards Procedure Report approved by the IRS, must send debtors 60 days-notice of the State's intent to send the debt to TOP-UIC, and must complete several forms required by the Financial Management Service of the US Treasury Department. As of April 16, 2012, 14 states are participating in the TOP-UIC. Those states have recovered more than \$140.6 million in tax refund payment offsets since February 2011.

Lastly, the Committee learned how DES uses cross-matching to discover and recover UI benefit overpayments.²⁰ It is the policy of DES to cross-match new hires weekly against the National New Hire Directory database and to cross-match wages quarterly against the Directory's database. It is the Committee's understanding that DES is pursuing the cross-matching of jail system records. In the USDOL presentation at the April 3, 2012, meeting, Gilbert and Ziegler spoke to the importance of SIDES: the State Information Data Exchange System. Holmes also emphasized the importance of participating in SIDES. Eighteen states have implemented SIDES and 25 more states are in different stages of programming and testing. In Holmes' presentation on "Best Practices", he mentioned the use of an array of cross-matches and the need to dedicate both staff and system resources to the cross-matching effort in order to use the tool

¹⁸ Pub. L. 110-328.

¹⁹ Pub. L. 111-291.

²⁰ Presentation made by Chanita Arceneaux on April 18, 2012.

effectively. The Committee may continue to pursue the cross-matching policies of DES since it is a key tool in overpayment prevention, detection, and recovery.

At its May 9, 2012 meeting, Assistant Secretary for the Division of Employment Security, Dempsey Benton, noted the suggestions made at the first two meetings for how DES could better prevent, detect, and recover improper payments. He briefed the Committee on the actions DES is taking to improve fraud prevention and collection of overpayments based on those suggestions:

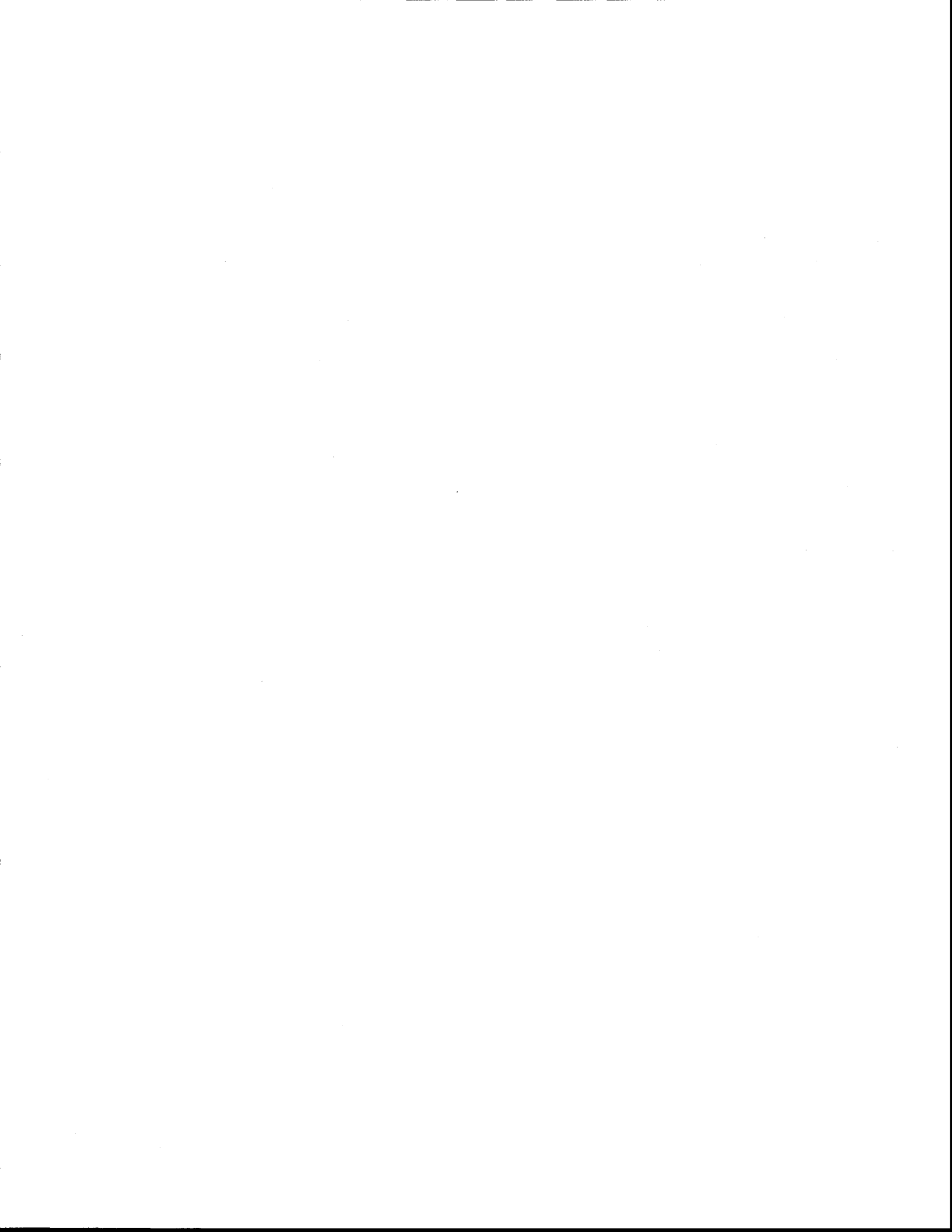
- An expansion of the Benefits Integrity staff investigative capacity.
- Pursuit of the implementation of the Treasury Offset Program.
- Modifications to DES's follow-up procedures related to cross-matching information.
- An agreement with Workforce Solutions that will require claimants to periodically visit a local office to verify claimant information.
- Enhanced efforts to encourage employers to communicate electronically with DES.
- Enhanced communication efforts with claimants to emphasize the causes and consequences of fraudulent overpayments.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSAL

The House Unemployment Fraud Task Force makes the following recommendations to the 2012 Regular Session of the 2011 General Assembly to better enable the State to prevent, detect and recover unemployment compensation overpayments:

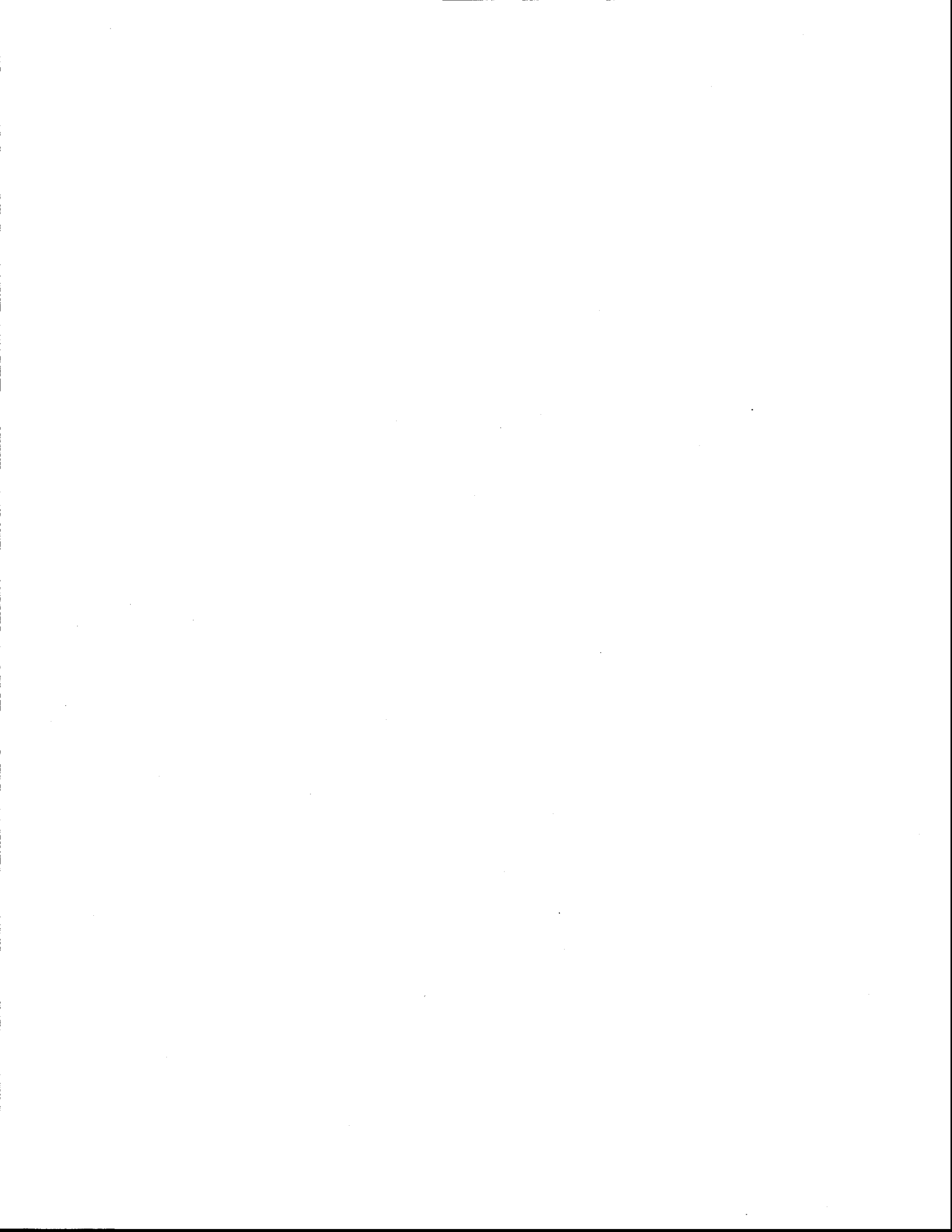
- Remove the statute of limitations on the recovery of overpayments.
- Increase the criminal penalty for fraudulent overpayments that exceed \$400.
- Impose the federally-mandated 15% penalty on fraudulent overpayments, effective October 1, 2013.
- Impose the federally-mandated prohibition on the non-charging of employer accounts if an overpayment is made due to the failure of the employer to respond timely and adequately to DES with information that could have prevented the overpayment, effective October 1, 2013.
- Amend the Directory of New Hires to require employers to report new hires within the last 60 days.
- Direct DES to report to the Committee on September 1, 2012, November 1, 2012, and January 1, 2013, on its efforts to implement the TOP-UIC program.

These recommendations are embodied in the following legislative proposal.



LEGISLATIVE PROPOSAL

UNEMPLOYMENT INSURANCE FRAUD PREVENTION & RECOVERY



LEGISLATIVE PROPOSAL

A RECOMMENDATION OF THE HOUSE UNEMPLOYMENT FRAUD TASK FORCE COMMITTEE
TO THE 2012 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

**AN ACT TO MAKE VARIOUS CHANGES TO THE UNEMPLOYMENT
INSURANCE LAWS TO BETTER ENABLE THE STATE TO PREVENT
UNEMPLOYMENT COMPENSATION OVERPAYMENTS AND TO DETECT
AND RECOVER UNEMPLOYMENT COMPENSATION OVERPAYMENTS.**

SHORT TITLE: UC Fraud Prevention & Recovery.

PRIMARY SPONSORS: Rep. Avila and Rep. Pridgen.

BRIEF OVERVIEW: The Legislative Proposal would make changes to the unemployment insurance laws to better enable the State to prevent unemployment compensation overpayments and to detect and recover unemployment compensation overpayments. The recommendation does the following:

- Makes it a Class I felony to knowingly obtain or increase an unemployment compensation benefit if the amount wrongfully obtained exceeds \$400. This penalty provision mirrors the current criminal provision for wrongfully obtaining a benefit under the Medicaid Program.
- Removes the three-year and ten-year statute of limitations for recovering an overpayment.
- Codifies the necessary provisions to conform to the federal requirements of the Trade Adjustment Assistance Extension Act of 2011:
 - New Hire Directory
 - Prohibition on Non-Charging of Employer Accounts if an improper payment is made because of an employer's failure to adequately and timely respond to a written request for separation information by DES.
 - Mandatory 15% penalty imposed on a fraudulent overpayment. The revenue from the penalty must be credited to the State Unemployment Trust Fund and used only for the payment of unemployment compensation benefits.

- Directs DES to report to the House Unemployment Fraud Task Force on September 1, 2012, November 1, 2012, and January 1, 2013, on its efforts to participate in the federal Treasury Offset Program to recover Unemployment Compensation debts from federal tax refunds.
-

FISCAL IMPACT:

EFFECTIVE DATE: Except as otherwise provided, the bill would become effective when it becomes law:

- The change in the criminal penalty provisions would become effective December 1, 2012, and apply to offenses committed on or after that date.
 - The elimination of the statute of limitations on the recovery of an unemployment compensation overpayment would become effective October 1, 2012, and apply to an overpayment established on or after that date.
 - The change to the New Hire Directory would become effective July 1, 2012.
 - The non-charging of employer accounts and the 15% mandatory penalty on a fraudulent overpayment would become effective October 1, 2013.
-
-

A copy of the proposed legislation begins on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE DRH30538-RBz-26B (04/25)

Short Title: UC Fraud Prevention & Recovery.

(Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS TO BETTER ENABLE THE STATE TO PREVENT UNEMPLOYMENT COMPENSATION OVERPAYMENTS AND TO DETECT AND RECOVER UNEMPLOYMENT COMPENSATION OVERPAYMENTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 96-18(a) reads as rewritten:

"(a) ~~Any~~ It shall be unlawful for any person who makes to make a false statement or representation knowing it to be false or to knowingly fails fail to disclose a material fact to obtain or increase any benefit under this Chapter or under an employment security law of any other state, the federal government, or of a foreign government, either for himself or any other person, shall be guilty of a Class 1 misdemeanor, and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense. Records, with any necessary authentication thereof, required in the prosecution of any criminal action brought by another state or foreign government for misrepresentation to obtain benefits under the law of this State shall be made available to the agency administering the employment security law of any such state or foreign government for the purpose of such prosecution. Photostatic copies of all records of agencies of other states or foreign governments required in the prosecution of any criminal action under this section shall be as competent evidence as the originals when certified under the seal of such agency, or when there is no seal, under the hand of the keeper of such records.

(1) A person who violates this subsection shall be found guilty of a Class I felony if the value of the benefit wrongfully obtained is more than four hundred dollars (\$400.00).

(2) A person who violates this subsection shall be found guilty of a Class 1 misdemeanor if the value of the benefit wrongfully obtained is four hundred dollars (\$400.00) or less."

SECTION 1.(b) This section becomes effective December 1, 2012, and applies to offenses committed on or after that date.

SECTION 2.(a) G.S. 96-18(g)(1) is repealed.

SECTION 2.(b) G.S. 96-18(g)(2) reads as rewritten:

"(2) Any person who has received any sum as benefits under this Chapter by reason of the nondisclosure or misrepresentation by him or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) or has been paid benefits to

1 which he was not entitled for any reason (including errors on the part of any
2 representative of the Division) ~~other than subparagraph (1) above~~ shall be
3 liable to repay such sum to the Division as provided in subparagraph (3)
4 below, ~~provided no such recovery or recoupment of such sum may be~~
5 ~~initiated after three years from the last day of the year in which the~~
6 ~~overpayment occurred below."~~

7 **SECTION 2.(c)** This section becomes effective October 1, 2012, and applies to an
8 overpayment established on or after that date.

9 **SECTION 3.(a)** G.S. 110-129.2(c) reads as rewritten:

10 "(c) Report Contents. – Each report required by this section shall contain the name,
11 address, ~~and~~ social security number of the newly hired employee, the date services for
12 remuneration were first performed by the newly hired employee, and the name and address of
13 the employer and the employer's identifying number assigned under section 6109 of the
14 Internal Revenue Code of 1986 and the employer's State employer identification number.
15 Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form,
16 and may be transmitted magnetically, electronically, or by first-class mail."

17 **SECTION 3.(b)** G.S. 110-129.2(j) is amended by adding a new subdivision to
18 read:

19 "(j) Definitions. – As used in this section, unless the context clearly requires otherwise,
20 the term:

21 ...
22 (5) "Newly hired employee" means (i) an employee who has not previously
23 been employed by the employer and (ii) an employee who was previously
24 employed by the employer but has been separated from such prior
25 employment for at least 60 consecutive days."

26 **SECTION 3.(c)** This section becomes effective July 1, 2012.

27 **SECTION 4.(a)** G.S. 96-9(c)(2) is amended by adding a new sub-subdivision to
28 read:

29 "(2) Charging of benefit payments. –

30 ...
31 f. The Division shall charge benefits to an employer's account when it
32 determines that an overpayment has been made to a claimant and it
33 determines that both of the following conditions apply:

- 34 1. The overpayment occurred because the employer failed to
35 respond timely or adequately to a written request of the
36 Division for information relating to an unemployment
37 compensation claim.
- 38 2. The employer exhibits a pattern of failure to respond timely
39 or adequately by failing to respond to written requests from
40 the Division for information relating to an unemployment
41 compensation claim on two or more occasions. If an
42 employer uses a third-party agent to respond on its behalf to
43 the Division, then the actions of the agent must be considered
44 when determining a pattern of failure to respond timely or
45 adequately. A pattern is established based on the agent's
46 behavior overall and not only with respect to its behavior
47 related to the employer.

48 For purposes of this sub-subdivision, written notification may
49 include a request sent electronically. A response is considered
50 untimely if it fails to be made within the time allowed under

1 G.S. 96-15(b)(2). A response is considered inadequate if it fails to
2 provide sufficient facts to enable the Division to make a correct
3 determination of benefits. However, a response may not be
4 considered inadequate if the Division fails to request the necessary
5 information.

6 The prohibition on the noncharging of an employer's account
7 under this sub-subdivision applies to each week of unemployment
8 compensation that is an overpayment until the Division makes a
9 determination that the claimant is no longer eligible for the overpaid
10 amount and stops making the overpayment. If the claim is a
11 combined-wage claim, the determination of noncharging for the
12 combined-wage claim shall be made by the paying state. If the
13 response from the employer does not meet the criteria established by
14 the paying state for an adequate or timely response, the paying state
15 must promptly notify the transferring state of its determination and
16 the employer must be appropriately charged. The Division may
17 waive the prohibition for good cause."

18 **SECTION 4.(b)** This section becomes effective October 1, 2013, and applies to an
19 overpayment established on or after this date.

20 **SECTION 5.(a)** G.S. 96-18 is amended by adding a new subsection to read:

21 "(h) Mandatory Federal Penalty. – A person who has been held ineligible for benefits
22 under subsection (e) of this section and who, because of those same acts or omissions, has
23 received any sum as benefits under this Chapter to which the person is not entitled, shall be
24 assessed a penalty in an amount equal to fifteen percent (15%) of the amount of the erroneous
25 payment. The penalty amount shall be payable to the fund. The penalty applies to an erroneous
26 payment made under any State program providing for the payment of unemployment
27 compensation as well as an erroneous payment made under any federal program providing for
28 the payment of unemployment compensation. The notice of determination or decision advising
29 the person that benefits have been denied or adjusted pursuant to subsection (e) of this section
30 must include the reason for the finding of an erroneous payment, the penalty amount assessed
31 under this subsection, and the reason the penalty has been applied.

32 The penalty amount may be collected in any manner allowed for the recovery of the
33 erroneous payment, except that the penalty amount may not be recovered through offsets of
34 future benefits. When a recovery with respect to an erroneous payment is made, any recovery
35 applies first to the principal of the erroneous payment, then to the federally mandated penalty
36 amount imposed under this subsection, and finally to any other amounts due."

37 **SECTION 5.(b)** G.S. 96-6(a) reads as rewritten:

38 "(a) Establishment and Control. – There is hereby established as a special fund, separate
39 and apart from all public moneys or funds of this State, an Unemployment Insurance Fund,
40 which shall be administered by the Division's Employment Insurance Section exclusively for
41 the purposes of this Chapter. All moneys in the fund shall be commingled and undivided. This
42 fund shall consist of:

- 43 (1) All contributions collected under this Chapter, together with any interest
44 earned upon any moneys in the ~~fund~~;fund.
- 45 (2) Any property or securities acquired through the use of moneys belonging to
46 the ~~fund~~;fund.
- 47 (3) All earnings of such property or ~~securities~~;securities.
- 48 (4) Any moneys received from the federal unemployment account in the
49 unemployment trust fund in accordance with Title XII of the Social Security
50 Act as ~~amended~~;amended.

1 (5) All moneys credited to this State's account in the Unemployment Trust Fund
2 pursuant to section 903 of Title IX of the Social Security Act, as amended,
3 ~~(U.S.C.A. Title 42, sec. 1103 (a));(U.S.C.A. Title 42, sec. 1103 (a)).~~

4 (6) All moneys paid to this State pursuant to section 204 of the Federal-State
5 Extended Unemployment Compensation Act of ~~1970~~;1970.

6 (7) Reimbursement payments in lieu of contributions.

7 (8) Any federally mandated penalty amount assessed under G.S. 96-18(h).

8 ~~All moneys in the fund shall be commingled and undivided."~~

9 **SECTION 5.(c)** This section becomes effective October 1, 2013, and applies to an
10 erroneous payment determined under G.S. 96-18(e) to be a fraudulent overpayment on or after
11 this date.

12 **SECTION 6.** The Department of the Treasury, Financial Management Service, is
13 the federal government's central debt collection agency. It develops and maintains a centralized
14 offset program known as the Treasury Offset Program (TOP), by which payments are offset to
15 collect delinquent debts owed to federal agencies and states. State Unemployment
16 Compensation debts are now eligible for referral to the Program, pursuant to Public Law
17 110-32 and Public Law 111-291.

18 It is the desire of the General Assembly for the State to participate in the
19 Unemployment Insurance Compensation Debt Program on or before January 1, 2013. The
20 Division of Employment Security is required to report to the House Unemployment Fraud Task
21 Force by September 1, 2012, November 1, 2012, and January 1, 2013, on the implementation
22 of the TOP. The report should contain, at a minimum, the following:

23 (1) An implementation time line, including a go-live date and status update on
24 where the Division is in the process.

25 (2) A detailed list of implementation requirements. For each requirement, the
26 Division is to provide any barriers and proposed solutions to each barrier.

27 (3) An itemized accounting of the cost to implement TOP, including the source
28 of funds used. Recurring and Nonrecurring costs shall be broken out
29 accordingly.

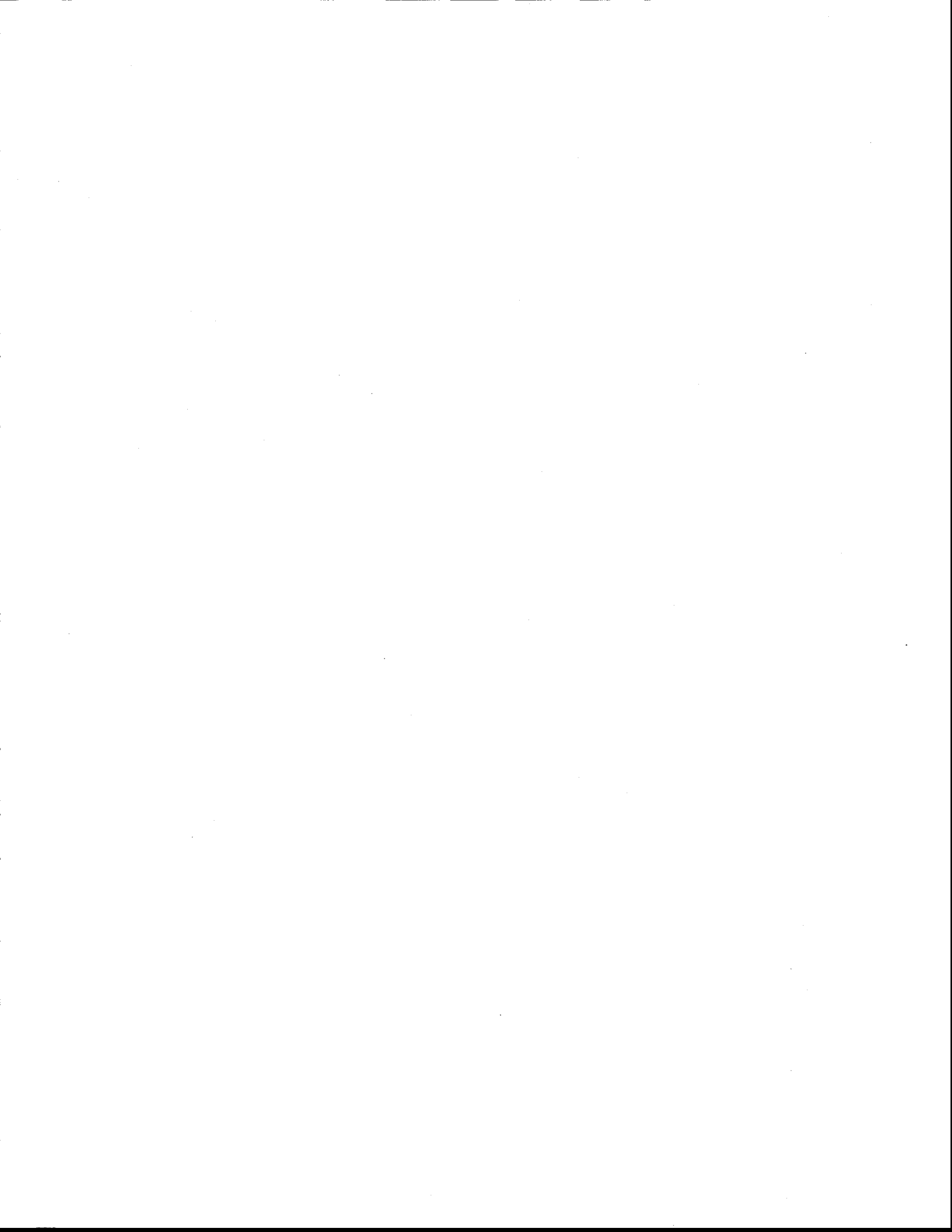
30 (4) For the September 1 report, the Division is to provide an estimate of how
31 much it anticipates recovering annually through TOP. The report should
32 include the methodology used to arrive at this estimate.

33 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
34 law.

APPENDIX A

AUTHORIZATION BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

ALL MATERIALS DISTRIBUTED AT MEETINGS MAY
BE VIEWED ON THE COMMITTEE'S WEBSITE:
<http://www.ncleg.net/committees/revenuelaws>





Office of the Speaker
 North Carolina House of Representatives
 Raleigh, N.C. 27601-1096

THOM TILLIS
 SPEAKER

**HOUSE UNEMPLOYMENT FRAUD TASK FORCE.
 TO THE HONORABLE MEMBERS OF THE
 NORTH CAROLINA HOUSE OF REPRESENTATIVES**

Section 1. The House Unemployment Fraud Task Force (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26 of the Rules of the House of Representatives of the 2011 General Assembly.

Section 2. The Committee consists of the 9 members listed below, appointed by the Speaker of the House of Representatives. Members serve at the pleasure of the Speaker of the House of Representatives. The Speaker of the House of Representatives may dissolve the Committee at any time.

Representative Marilyn Avila, Co-Chair
Representative G. L. Pridgen, Co-Chair
Representative Tim Moffitt
Representative Julia Howard
Representative Harry Warren
Representative Trudi Walend
Representative Rodney Moore
Representative Annie Mobley
Representative Susi Hamilton

Section 3. The Committee may study the following issues related to unemployment and unemployment fraud in this State and determine if legislative action is needed to address the issues:

1. Best practices from other states in unemployment fraud prevention and recovery.
2. Utilization of existing unemployment fraud programs and resources, including the North Carolina Division of Employment Security's participation in the Federal Treasury Offset Program (TOP) and the potential for federal funding for implementation.
3. Definition of unemployment fraud and protocols for pursuing unemployment overpayments.
4. Penalties for unemployment benefit fraud and consistency with penalties for fraud in other programs.

HOUSE UNEMPLOYMENT FRAUD TASK FORCE

5. Statute of limitations for pursuing fraudulent unemployment overpayments.
6. Other ways to reduce fraud in the unemployment system.
7. Ways to making workforce development and job placement a core mission of the Division of Employment Security.

Section 4. The Committee shall meet upon the call of its Co-Chairs. A quorum of the Committee shall be a majority of its members.

Section 5. The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes.

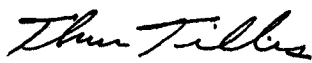
Section 6. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1.

Section 7. The expenses of the Committee including per diem, subsistence, travel allowances for Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations.

Section 8. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Committee.

Section 9. The Committee shall submit a report on the results of the study, including any proposed legislation, to the members of the House of Representatives on or before May 15, 2012, by filing a copy of the report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee may also report to the 2013 General Assembly by filing a report as set forth herein on or before December 31, 2012. The Committee terminates on December 31, 2012, or upon the filing of its final report, whichever occurs first.

Effective this the 15th day of March, 2012.



Thom Tillis
Speaker

APPENDIX B

MEETING AGENDAS

**ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE
VIEWED ON THE COMMITTEE'S WEBSITE:
<http://www.ncleg.net/committees/revenuelaws>**



HOUSE UNEMPLOYMENT FRAUD TASK FORCE AGENDA

Rep. Marilyn Avila, Co-Chair

Rep. G.L. Pridgen, Co-Chair

Tuesday, April 3, 2012
Room 544, Legislative Office Building
10:00 a.m. – 11:45, 1:00 p.m. – 3:00 p.m.

- I. **Welcome and Introductions**
- II. **House Unemployment Fraud Task Force Authorization and Meeting Overview**
Cindy Avrette, Research Division
- III. **Unemployment Insurance Benefits**
 - A. **Introduction**
Keith Crisco, Secretary of Commerce
 - B. **Purpose and Scope of Unemployment Insurance**
Lockhart Taylor, Director of Governmental Relations, Division of Employment Security, Department of Commerce
 - C. **Overview of the Claims Process**
David Canady, UI Director, DES, Department of Commerce
 - D. **Benefit Payment Control: Detection and Collection of Overpayments**
Chanita Arceneaux, Integrity Unit, DES, Department of Commerce
 - E. **Adjudications: Local Office or Central Office**
Cindy Walters, Deputy Chief of Claims, DES, Department of Commerce
 - F. **Appeals**
Henry Burgwyn, Chief Appeals Referee, DES, Department of Commerce
 - G. **Commission Appeals**
Tom Hodges, Chief Legal Counsel, DES, Department of Commerce
 - H. **Employment Tax Contributions**
Ted Brinn, Jr., Field Tax Operations Manager, DES, Department of Commerce
 - I. **Conclusion**
Keith Crisco, Secretary of Commerce
- IV. **Unemployment Compensation Program Integrity** *(via teleconference)*
Gay Gilbert, USDOL, Administrator, Office of Unemployment Insurance

Dale Ziegler, US Department of Labor, Deputy Administrator,
Office of Workforce Services

V. **Best Practices for Improper Payment Prevention, Detection, and Recovery** *(via teleconference)*

Doug Holmes, UWC - Strategic Services on Unemployment &
Workers' Compensation

VI. **Closing Remarks and Adjournment**

HOUSE UNEMPLOYMENT FRAUD TASK FORCE AGENDA

Rep. Marilyn Avila, Co-Chair

Rep. G.L. Pridgen, Co-Chair

**Wednesday, April 18, 2012
Room 643, Legislative Office Building
10:00 a.m.**

- I. Welcome and Introductions**
- II. Adoption of the Minutes from the April 3, 2012, Meeting**
- III. Synopsis of Practices and Strategies to Improve Program Integrity**
Kristin Walker, Fiscal Research Division, NCGA
- IV. Recent Federal and State Legislation**
 - A. Trade Adjustment Assistance Extension Act of 2011**
Cindy Avrette, Research Division, NCGA
 - B. S.L. 2011-401: ESC/Jobs Reform Legislation**
Phyllis Pickett, Bill Drafting Division, NCGA
- V. Differences between Overpayments and Fraudulent Overpayments**
Jan Paul, Research Division, NCGA
- VI. Treasury Offset Program**
 - A. Introduction**
Rodney Bizzell, Fiscal Research Division, NCGA
 - B. Overview**
Thomas Kobielus, US Treasury Department
 - C. DES Implementation Plan**
Division of Employment Security, Department of Commerce
- VII. Cross-Matching Efforts**
Chanita Arceneaux, Division of Employment Security, Department of Commerce
- VIII. Comments by Interested Parties re: Practices and Strategies to Improve Program Integrity**
 - Andy Ellen, President & General Counsel, NC Retail Merchants Association
 - Harry Payne, Senior Counsel, NC Justice Center
 - Gary Salamido, VP of Government Affairs, NC Chamber
 - Connie Wilson, Lobbyist, Employers Coalition of North Carolina
- IX. Adjournment**



HOUSE UNEMPLOYMENT FRAUD TASK FORCE AGENDA

Rep. Marilyn Avila, Co-Chair

Rep. G.L. Pridgen, Co-Chair

Wednesday, May 9, 2012
Room 415, Legislative Office Building
1:00 p.m.

- I. **Welcome and Introductions**
- II. **Steps the Division of Employment Security is Taking to Prevent, Detect, and Recover Fraudulent Overpayments**
Dempsey Benton, Deputy Secretary, Division of Employment Security, Department of Commerce
- III. **Explanation of the "Back-to-Back" Rule**
Lockhart Taylor, Director of Governmental Relations, Division of Employment Security, Department of Commerce
- IV. **Consideration and Adoption of Interim Report**
 - A. **Legislative Recommendation: UC Fraud Prevention & Recovery**
 - B. **Approval of Interim Report**
- V. **Status Report on the Study re: An Analysis of the UI Tax Structure and other Financial Options to Service and Liquidate the State's Debt Incurred to Pay UI Benefits (SB 99; S.L. 2011-10)**
Keith Crisco, Secretary of Commerce
- VI. **Adjournment**

