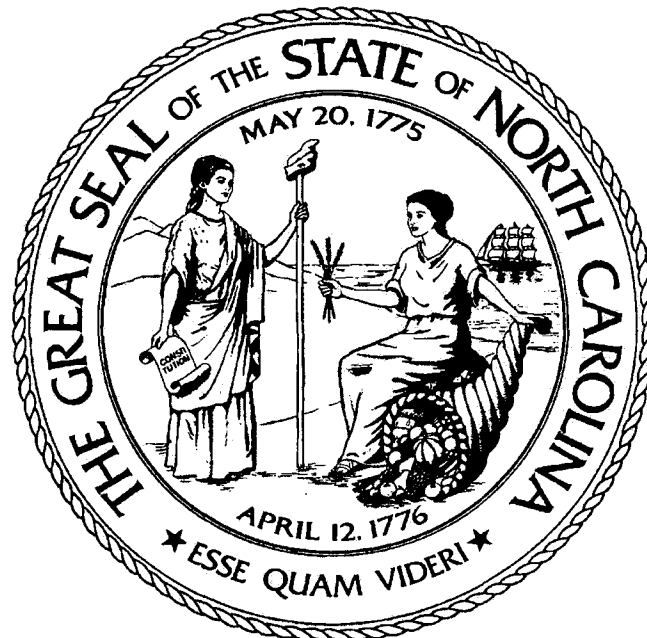


2013-2014  
JOINT LEGISLATIVE OVERSIGHT  
COMMITTEE ON  
UNEMPLOYMENT INSURANCE



REPORT TO THE 2015-2016  
GENERAL ASSEMBLY OF NORTH CAROLINA  
2015 SESSION



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\*All of the meeting handouts, including Power Point presentations, may be accessed online in PDF format at the Joint Legislative Oversight Committee on Unemployment Insurance website: [http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing\\_6596](http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_6596)



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to the Joint Legislative Oversight Committee on Unemployment Insurance







**JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON  
UNEMPLOYMENT INSURANCE**

*State Legislative Building  
Raleigh, North Carolina 27603*

*Representative Julia C. Howard, Co-Chair*

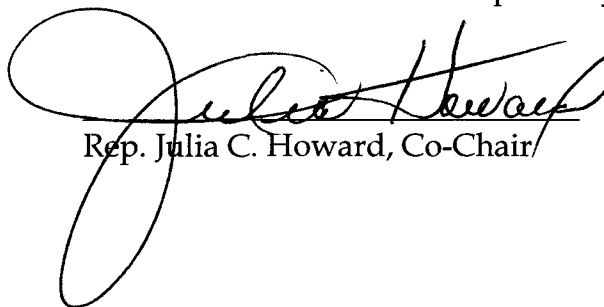
*Senator Bob Rucho, Co-Chair*

**January 7, 2015**

**TO THE MEMBERS OF THE 2015 GENERAL ASSEMBLY:**

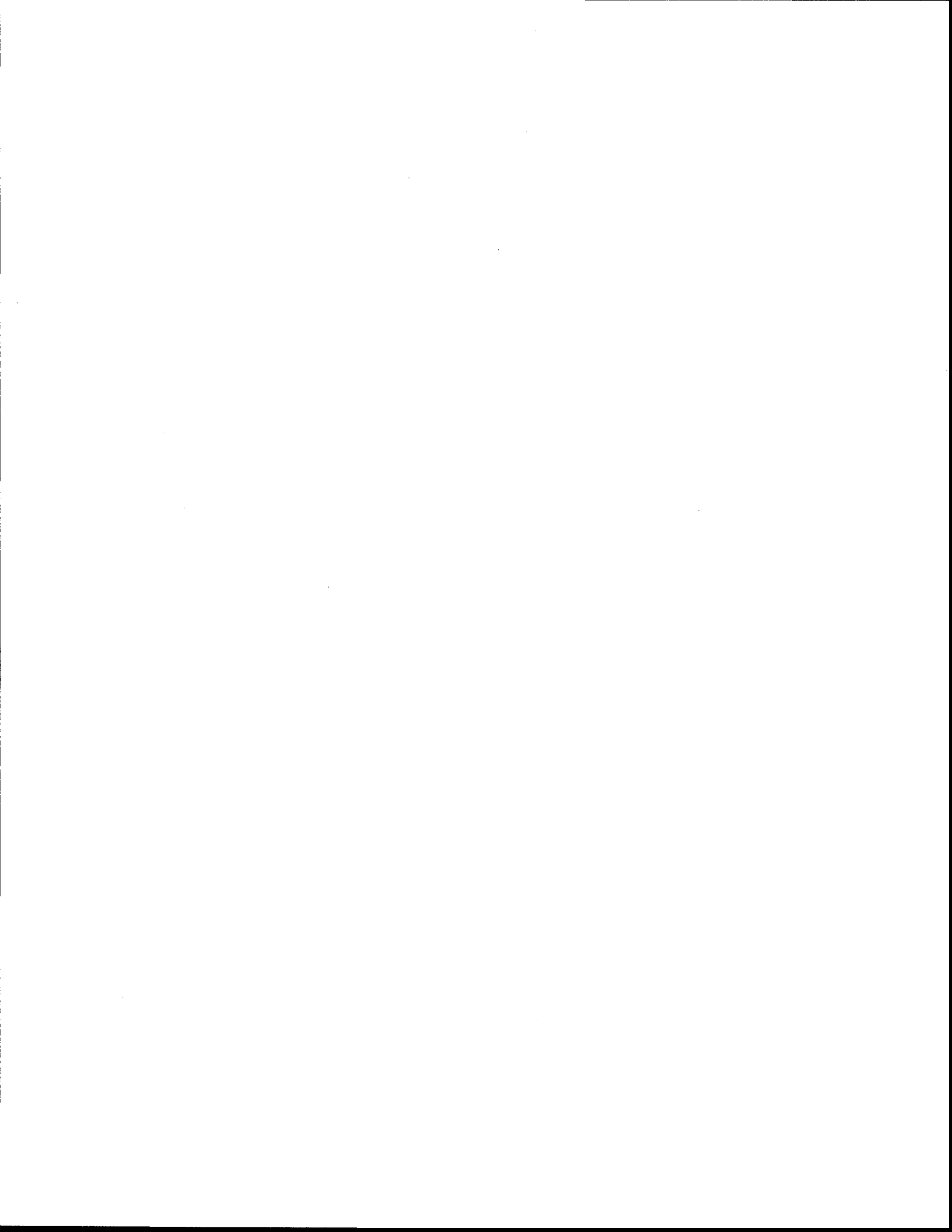
The Joint Legislative Oversight Committee on Unemployment Insurance submits to you for your consideration its report pursuant to G.S. 120-70.155; S.L. 2013-2, Section 10; House Bill 4, Section 10.

Respectfully Submitted,

  
Rep. Julia C. Howard, Co-Chair



Senator Bob Rucho, Co-Chair



2013-2014

JOINT LEGISLATIVE OVERSIGHT COMMITTEE  
ON UNEMPLOYMENT INSURANCE

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Jan Paul, Staff Attorney

Greg Roney, Staff Attorney

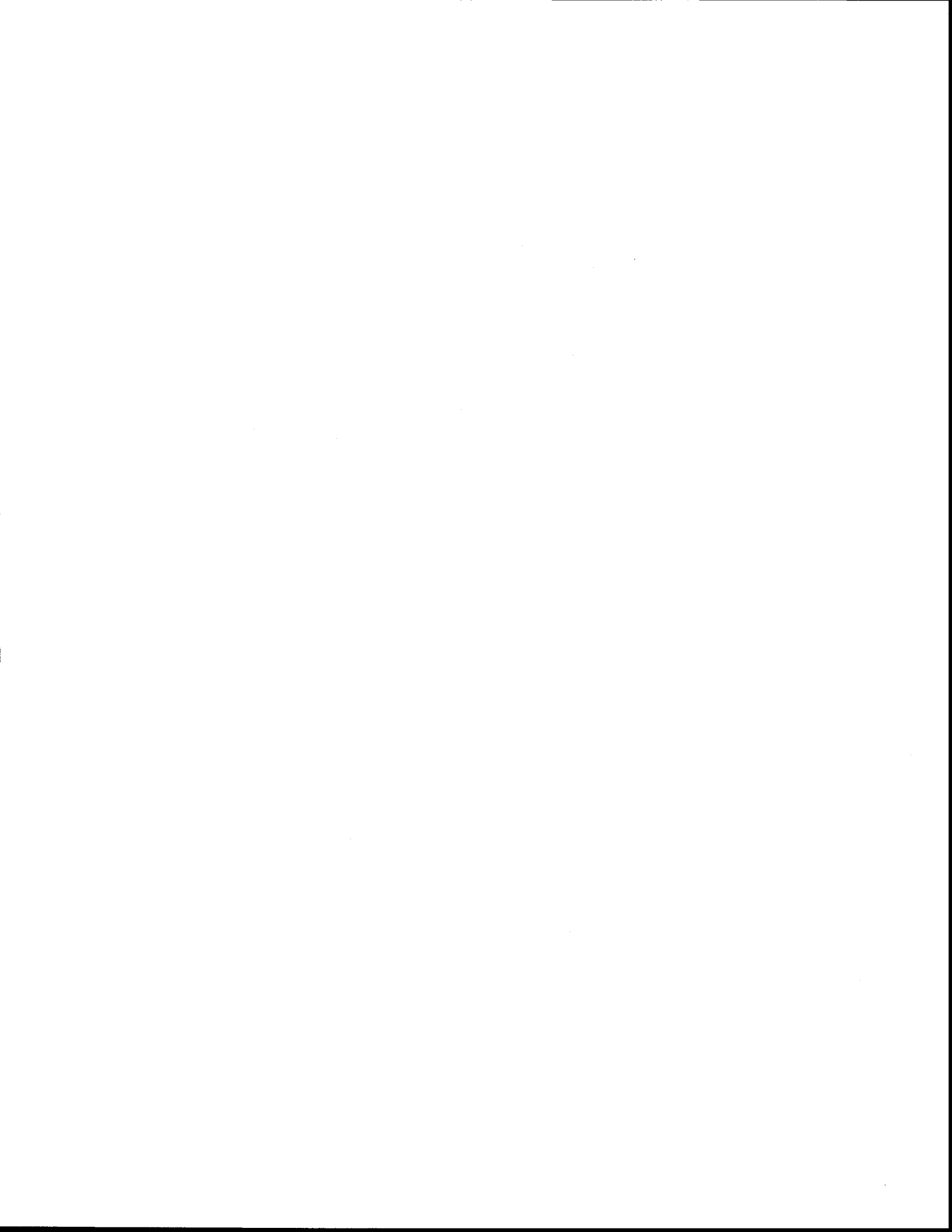
BILL DRAFTING DIVISION:

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FISCAL RESEARCH DIVISION:

Rodney Bizzell, Fiscal Analyst

Aubrey Incorvaia, Fiscal Analyst



## PREFACE

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The Unemployment Compensation Program is a federal-state partnership created by the federal Social Security Act of 1935 and the Federal Unemployment Tax Act (FUTA). The purpose of the Unemployment Insurance (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 a state unemployment tax to fund the program. No part of either tax may be deducted from an employee's wages.

North Carolina, like many other states, could not adequately fund its unemployment insurance trust fund during the Great Recession. North Carolina began borrowing money from the federal government to pay its unemployment benefits in February 2009. The State's outstanding loan balance reached \$2.5 billion. The General Assembly enacted fundamental changes<sup>2</sup> to the State's UI program to address the structural imbalance in the State's unemployment insurance fund:

- Merger of the administration of the UI program from an independent agency to a division within the Department of Commerce with the goal of achieving employment security organizational reform and savings.

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<sup>2</sup> S.L. 2011-145 (House Bill 200), Section 14.5 and Section 14.5C, and S.L. 2011-401 (Senate Bill 532); S.L. 2012-134 (Senate Bill 828); S.L. 2013-2 (House Bill 4); House Bill 1069, ratified June 23, 2014, vetoed June 24, 2014.

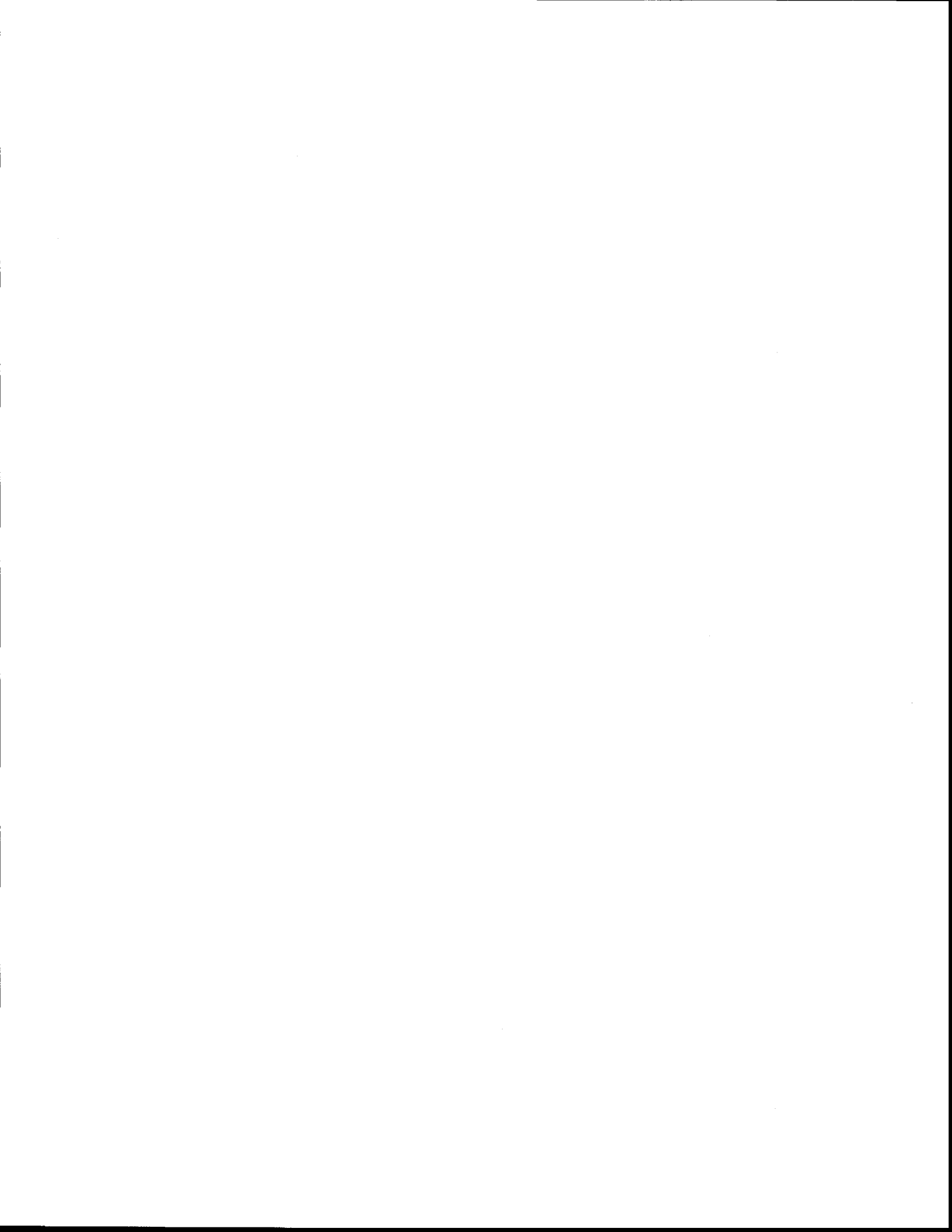
The merger sought to streamline and strengthen the workforce development efforts of the UI program and Commerce.

- Creation of a Board of Review to determine appeal policies and procedures and to hear appeals arising from decisions of appeals referees.
- Enhancements of the tools available to the Division of Employment Security (DES) to prevent, detect, and recover UI overpayments.
- Decreases in the benefit calculation and duration.
- Increases in the State unemployment tax rates.
- Repeal of substantial fault, elimination of most good cause provisions for leaving work voluntarily, and restriction of the ability to file attached claims.

The General Assembly created the Joint Legislative Oversight Committee on Unemployment Insurance as a Non-Standing Committee to ensure that a group of legislative members remain educated on UI issues and the administration of the State's program. 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 co-chairs for 2013-2014 are Representative Julia C. Howard and Senator Bob Rucho.

G.S. 120-70.156 gives the Committee a very broad scope in its study of the unemployment insurance laws, directing the Committee to "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." A copy of Article 12R of Chapter 120 of the General Statutes 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/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing\\_6596](http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_6596)





## COMMITTEE PROCEEDINGS

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The Joint Legislative Oversight Committee on Unemployment Insurance met five times prior to the convening of the 2015-2016 General Assembly. The Committee focused its attention on the repayment of the debt owed by the Unemployment Insurance Fund to the federal unemployment account, the lapse of rules applicable to the Division of Employment Security (DES), the program integrity tools utilized by DES, and the policies ratified by the 2014 General Assembly in House Bill 1069 but vetoed by the Governor. 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.

### UNEMPLOYMENT TRUST FUND DEBT BALANCE

The Committee received regular status reports on the Unemployment Trust Fund debt balance. The State continues to be on track to retire the debt in 2015. The year-end debt balance for 2014 is \$435,203,936. The year-end debt balance for 2013 was \$1.8 billion and the balance for the end of 2012 was \$2.5 billion.

### FUTA Tax Rate

The Federal Unemployment Tax Act (FUTA) paid by employers partially funds the State's Unemployment Trust Fund. When the State is in compliance with U.S. Department of Labor (USDOL) requirements, the effective FUTA tax rate is 0.6% on a \$7,000 wage base (\$42 per employee). This effective rate reflects a tax rate of 6% with a credit of 5.4%.

The first credit reduction occurs when states borrow from the Federal Unemployment Account and cannot repay the borrowings for two years. The basic credit reduction is 0.3% in the third year and increases by 0.3% each year.

After the State borrowed from the federal government for two successive years, the basic credit reduction was triggered for NC employers in 2011 to accelerate repayment of the debt. USDOL applies the proceeds from the increased effective tax rate directly to the outstanding principal balance of the loan. The State is responsible for paying the interest that accrues on the loan.

The FUTA credit reduction for NC employers in 2014 was 1.2%, and that translated into an additional tax of \$84 per employee. The FUTA credit reduction for 2015 will be 1.5%, an additional \$105 per employee.

Upon the retirement of the debt, the FUTA credit will return to 5.4% in the subsequent taxable year. It is anticipated the debt will be retired in 2015 and the FUTA tax credit will return to its full 5.4% for the 2016 taxable year, resulting in an effective tax amount of \$42 per employee.

#### **BCR Add-On Tax**

In addition to the basic credit reduction, FUTA taxes may be increased by up to 2.7% under the Benefit Cost Rate (BCR) add-on to federal unemployment taxes under FUTA. The BCR add-on tax is calculated under a formula with a maximum potential rate of 2.7%, equal to \$189 per employee annually. The BCR add-on may be applied to employers in states after five consecutive years of borrowing from the federal government. The BCR add-on tax would have potentially applied to North Carolina for tax year 2015. A state may apply for a BCR waiver when certain conditions are met.

The Committee encouraged DES to apply for the BCR add-on waiver. Assistant Secretary Folwell reported at the September meeting that DES had submitted a waiver request to USDOL. To be eligible for the waiver, states must

take no action to decrease trust fund solvency that take effect during the 12-month period prior to September 1st of the year for which the waiver is requested. The waiver request verified that no action had been taken during that timeframe which would have negatively affected fund solvency. In November, USDOL approved the waiver request. Under the waiver, the BCR add-on will not apply in North Carolina.

### **ADMINISTRATIVE RULES**

In 2011, the General Assembly created the Division of Employment Security within the N.C. Department of Commerce and transferred all of the functions and operations of the former Employment Security Commission to DES, effective November 1, 2011. In addition to the merger and consolidation, S.L. 2011-401 made DES subject to rule making under North Carolina's Administrative Procedure Act; the Employment Security Commission had been exempt from rule making. In recognition of this different policy decision, Section 1.10(c) of S.L. 2011-401 directed DES to "adopt all existing rules and regulations in accordance with Article 2A of Chapter 150B of the General Statutes. Any existing rule that has not been readopted by December 31, 2012, shall expire," thereby allowing DES 18 months to adopt rules.<sup>3</sup>

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

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<sup>3</sup> S.L. 2011-401 became law on July 26, 2011.

Bill 761 would have granted an extension of the deadline, the bill failed to be enacted. Based on the 2011 legislation, the Commission rules and regulations expired December 31, 2012. Thus, with the exception of the four rules related to confidentiality, DES is conducting its business in the absence of any rules governing its practices and procedures.

The Committee expressed concern about DES's operating without adopted rules. At the request of the Committee's chairs, the Committee's staff contacted US DOL to ask if there were any federal consequences for operating in the absence of adopted rules. US DOL advised the General Assembly as follows: "Like most states, North Carolina's UI regulations generally establish procedures to operationalize requirements in state UI law. It is rare for a state to establish a regulatory requirement that is not based on an explicit provision in state UI law. For this reason, an absence of regulations would not necessarily raise a conformity issue. However, if the absence of regulations were to result in a state ceasing operation of certain functions or modifying them in a manner that is inconsistent with Federal UI law, a compliance issue may be raised."

The Committee remains concerned that operating in the absence of rules could make DES vulnerable to litigation. Every Committee agenda during this interim included a status report on the progress of DES to adopt its rules. After its first meeting on September 10, 2014, the Committee sent a letter to Assistant Secretary Folwell on September 12, 2014, requesting a copy of the agency's proposed rules by the date of the Committee's October 8, 2014, meeting. The Assistant Secretary failed to submit these documents as requested. At the October meeting, the Committee specifically asked the Assistant Secretary for a date when it could expect submission of the documents; however, a date was not provided. Subsequent to the October meeting, DES submitted the requested documents to the Committee's staff.

During the October meeting Jan Paul, Legislative staff attorney to the Committee, addressed the legal implications and consequences of DES's operating without rules. At the same meeting, Molly Masich, Codifier of Rules for the Office of the Administrative Hearings (OAH), provided an overview of the rule making process. Ms. Masich provided the Committee with a flow chart that detailed the permanent rule making process for all agencies under the Administrative Procedure Act. A copy of the flow chart is contained in Appendix C. She explained that the process is largely agency-driven and that it takes approximately four months from the time the proposed rules and fiscal notes are submitted to OAH to the time the rules go into effect in the North Carolina Administrative Code.

Before proposed rules may be submitted to OAH, they must have a fiscal note approved by the Office of State Budget and Management (OSBM). Anca Grozav, Economic Analyst with OSBM, stated that fiscal notes must be approved at the beginning of the rules review process in order to ascertain the economic impact a proposed rule will have on State or local funds. For rules that have a substantial impact, OSBM must certify that the agency has met certain statutory regulatory principles, such as whether the agency sought to reduce the burden on the regulated community, and that the agency has attempted to achieve its regulatory objective in a cost-effective manner.

Both OAH and OSBM routinely work with agencies to assist them in the formation of their rules in a "pre-review process." The staff of both OAH and OSBM testified that they had assisted DES to the extent requested by DES, and that both OAH and OSBM were willing and able to assist DES to accomplish the adoption of the necessary rules in a timely manner. The Committee learned that the Industrial Commission also became subject to rule making through

legislation enacted in 2011 and that the Industrial Commission had met the December 2012 statutory deadline in November 2012.

Jeremy Ray, DES Legal Liaison and Rule Making Coordinator, acknowledged at the October meeting that DES had drafted 180 rules and that OAH and OSBM had provided a pre-review of those rules. At the Committee's November meeting, Kevin Carlson of DES informed the Committee that three of five fiscal notes had been completed after the rules were reorganized in early November, and that he anticipated the final fiscal note should be complete by the end of November. At the request of the Committee, DES reported that it believed it would be in a position to submit its proposed rules to OAH by February 9th. Legislative Proposal #1 contains a provision extending the deadline for the adoption of rules from December 31, 2012, to February 9, 2015. After the rules are submitted to OAH, the 60-day public comment period will begin. Given that the rules will codify the current practices the agency, few to no comments are expected. It is anticipated the rules will be placed on the May agenda of the Rules Review Commission and become effective July 1, 2015.

The Committee will continue to monitor the progress made by DES in the formulation of its fiscal note to OSBM and in its submission of its proposed rules to OAH.

#### **PROGRAM INTEGRITY: IMPROPER PAYMENTS**

The Committee continued to investigate the program integrity efforts of DES in 2014. Over the course of three committee meetings, legislators focused on improper payments and sought to 1) define and quantify the problem, 2) understand agency activities, and 3) discern how DES was leveraging resources within the State's Government Data Analytics Center (GDAC).

### Define & Quantify Improper Payments

The U.S. Department of Labor annually publishes UI Benefit Accuracy Measurement Reports:

*The Benefit Accuracy Measurement (BAM) program is designed to determine the accuracy of paid and denied claims in three major Unemployment Insurance (UI) programs: State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Servicemembers (UCX). State Workforce Agencies select weekly random samples of UI payments and denied claims. BAM investigators audit these paid and denied claims to determine whether the claimant was properly paid or denied eligibility. The results of the BAM statistical samples are used to estimate accuracy rates for the populations of paid and denied claims.<sup>4</sup>*

According to the US DOL, for the period of July 1, 2012 through June 30, 2013, North Carolina's estimated overpayment rate was 17.5%, which amounts to \$225 million in improper payments.<sup>5</sup> US DOL indicates that 92% of improper payments are attributed to issues related to work search, separation, and benefit year earnings.<sup>6</sup>

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<sup>4</sup> USDOL UI Benefit Accuracy Measurement Report for CY 2003, available at: <http://www.ows.doleta.gov/unemploy/bam/2003/bam-cy2003.asp>

<sup>5</sup> USDOL NC Improper Payments, available at: <http://www.dol.gov/dol/maps/state/NC.htm>

<sup>6</sup> Ibid. Other categories include: claimant + employer, employer only, employer + agency, claimant + agency, agency only, claimant + employer + agency.

Causes of Improper Payments		
Root Cause	Percentage of Overall Improper Payments	Description
Work Search Issues	45%	Inability to validate that the individual has met the state's work search requirements, which disqualifies the claimant from being eligible for benefits.
Separation Issues	25%	Information regarding the claimant's separation from work is received after a claim is paid that disqualifies the claimant from being eligible for benefits and creates an overpayment (employer sends inaccurate or late information or a ruling is made on appeal).
Benefit Year Earnings	22%	The claimant continues to claim and receive benefits after returning to work.
Other	8%	
TOTAL	100%	

North Carolina's fraud rate is estimated to be 4%, or \$ 51.5 million. Fraud can be perpetuated by both employers and claimants. Employers commit fraud through several activities, including:

1. "SUTA dumping," also known as undocumented succession, whereby a business owner establishes a new business with a lower unemployment tax rate and moves employees to the new business, avoiding a higher taxable rate (DES discovered 304 cases with an associated value of \$4.4 million between December, 2013 and September, 2014).
2. Establishing fictitious businesses whereby a company registers with DES, files retroactive wage reports, and has a significant number of employees filing claims and drawing benefits at a rate faster than the accumulated taxes are paid (DES discovered 106 fictitious accounts between 2011 and December, 2013; estimated savings total \$5.2 million).
3. Misclassifying employees as independent contractors to avoid paying unemployment insurance. (In 2013, as a result of DES efforts, 5,691 workers were reclassified from independent contractors to employees).



Claimants commit fraud by filing for and collecting benefits: 1) while working, 2) under a deceased person's identity, 3) while incarcerated, or 4) under the guise of a fictitious business.

### Prescreening Claims

During the December meeting, DES presented to the Committee an overview of the Division's screening procedures to reduce improper payments. The procedures were divided into 4 groups ("gates"): (1) crosscheck of initial claim, (2) notices to employer and claimant, (3) crosscheck of weekly certification, and (4) Employability Assessment Interview (EAI).

Gate 1 - Crosscheck of Initial Claim: When an initial claim is filed, DES checks the claimant's last name, Social Security number, date of birth, and gender as the first step to establish a claim. Additionally, claims by aliens are matched through the US Department of Homeland Security. Initial claims that cannot satisfy Gate 1 are placed in held status and reviewed manually. Certain claims, such as military and federal employee, are also handled manually. Claims are matched to tax returns filed by employers. The employer data includes wage records that are used to determine monetary eligibility. In sum, Gate 1 requires that a claim name an individual with a known identity (i.e., name, Social Security number, date of birth, gender) and match tax records filed by an employer reporting wages for the individual.

Gate 2 - Notices to Employer and Claimant: DES sends notice of claim and potential charges to all employers in the base period. Employers respond using an Employer Separation Response (Form 500AB). DES also confirms the claimant registered with NC Works; NC Works is the online job posting service maintained by the Division of Workforce Solutions (DWS) in the NC Department of Commerce. DES sends the claimant notice of monetary eligibility. To prevent claims in multiple states, DES checks the State Inquiry Data Interchange (SIDI).

The SIDI reports any claims by the same individual in different states. At Gate 2, the reason for separation is considered. Factual disputes between the employer and employee must be resolved through DES' adjudication procedures. If the employee states a valid reason for separation and the employer does not dispute the reason for separation, the claim would be eligible for payment if the claimant files a weekly certification which is Gate 3.

Gate 3 - Crosscheck of Weekly Certification: Each week claimants must file a weekly certification attesting the claimant was able to work, available to work, and actively looking for work. DES checks each weekly certification against the National Directory of New Hires (NDNH), employers' quarterly tax filings, the Government Data Analytics Center (GDAC) databases (discussed in next section of this Report), and other information DES receives such as fraud tips and employer correspondence. The NDNH is a database where employers are required to report any new hires and maintained to enforce child support obligations. Any match in the NDNH database automatically stops unemployment payments. Quarterly tax filings include wages for each employee showing if a claimant has worked.

Gate 4 - Employability Assessment Interview (EAI): In the fourth week of a claim, the individual must report to a DWS office for an in-person Employability Assessment Interview (EAI). DES and DWS require the claimant to present government-issued photographic identification at the EAI. The interview is an opportunity for DWS to work with the claimant to find a new job.

#### *Government Data Analytics Center (GDAC)*

The Committee reviewed information about GDAC. GDAC develops, implements, and maintains a wide range of State information technology program efforts. The key functions of GDAC include finding and preventing fraud and waste as well as other compliance analytics. The Committee

determined that an aggressive collaborative effort between DES and GDAC to maximize use of data analytics capabilities will enhance the State's ability to administer the unemployment insurance program efficiently and effectively. Legislative Proposal #2 contains this recommendation.

### **POLICY CHANGES RECOMMENDED TO THE 2014 GENERAL ASSEMBLY**

The Committee recommended several policy changes to the 2014 General Assembly in House Bill 1069. The General Assembly ratified House Bill 1069 on June 23, 2014, but the Governor vetoed the bill on June 24, 2014. One of the policy changes recommended in House Bill 1069 became enacted in S.L. 2014-117, Senate Bill 42; the Committee recommends the remaining policy changes that were not enacted in 2014 to the 2015 General Assembly. These changes may be found in Legislative Proposal #1 and are as follows:

- Authorize the Division of Motor Vehicles to disclose Social Security numbers to DES.
- Modify the job search requirement by eliminating the need to contact employers on separate days and by increasing the number of job contacts a UI claimant must make each week from two to five.
- Eliminate the procedure to request reconsideration of decisions.
- Clarify the ability of DES to attach and garnish credit card receipts for collection of unpaid UI taxes.
- Require a UI claimant to provide photo identification to receive UI benefits.
- Set the duration of UI benefits based only on the unemployment rate.

#### **Variable Duration Formula**

The Committee spent considerable time reviewing the duration formula for UI benefits, and it decided to recommend the same legislation on this issue to

the 2015 General Assembly that it recommended to the 2014 General Assembly in House Bill 1069. While this change may eliminate attachment to workforce as a factor in measuring duration, the Committee found that attachment to the workforce remains a factor in the calculation of the Weekly Benefit Amount (WBA) because the formula for the WBA is based on the wages received in the most recent two quarters.

The variable duration formula is used to determine the number of weeks of eligibility a claimant has for unemployment benefits. S.L. 2013-2 changed the duration formula to include a sliding scale duration schedule based upon the unemployment rate in addition to a variable formula based on a claimant's attachment to the workforce, which is a measure of how evenly wages are distributed throughout the base period. Under the sliding scale duration schedule, if the unemployment rate is 5.5% or less, the number of weeks of eligibility ranges between 5 and 12. For each one-half percent increase in the unemployment rate, the minimum and maximum number of weeks increase by one, up to a range of 13-20 weeks when the unemployment rate is above 9%.

<b>HB 4 Duration Schedule</b>	
<b>Seasonal Adjusted Unemployment Rate</b>	<b>Weeks</b>
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

The variable duration formula determines the number of weeks for which claimants qualify within the range based on attachment to workforce. Claimants

with a more even distribution of wages throughout the base period receive a greater number of weeks than claimants with wages concentrated in less than four quarters. If the formula results in a number higher than the range maximum, the claimant receives the maximum. Similarly, if the formula results in a number less than the range minimum, the claimant receives the minimum.

During the 2013-2014 interim, DES determined that the formula did not yield results less than 17 weeks. Therefore, when the maximum number of weeks is 17 or less, claimants receive the maximum because the formula does not yield any results within the range. The solution recommended by the Committee to the 2014 General Assembly in HB 1069 would have assigned the maximum number of weeks for each respective unemployment rate. As a result, duration would vary solely based on the unemployment rate; the reward for workforce attachment would be accounted for within the weekly benefit amount formula, which equals wages paid in the last two completed quarters of the base period divided by 52 and rounded to the next lower whole dollar. Because the maximum number of weeks was reduced to 14 in July 2014 based on the unemployment rate, this proposal would have reflected actual practice. However, the Governor vetoed House Bill 1069 for reasons unrelated to the duration formula.

At the September and November meetings in 2014, the Committee heard staff presentations on the problem with the formula and potential solutions. Legislators discussed formulas used in other states and examples of formulas that would yield results within the range of weeks available to claimants under the current law. The Committee chose to again recommend the elimination of the variable ranges assigned to each respective unemployment rate and assign the maximum number of weeks for each rate as proposed in House Bill 1069 last session. This solution is simpler for the public to understand and for DES to

administer. The Committee notes that attachment to the workforce remains a factor in the benefits a claimant receives since the formula for the WBA is based on the wages received in the most recent two quarters.

<b>Proposed Duration Schedule</b>	
<b>Seasonal Adjusted Unemployment Rate</b>	<b>Weeks</b>
Less than or equal to 5.5%	12
Greater than 5.5% up to 6%	13
Greater than 6% up to 6.5%	14
Greater than 6.5% up to 7%	15
Greater than 7% up to 7.5%	16
Greater than 7.5% up to 8%	17
Greater than 8% up to 8.5%	18
Greater than 8.5% up to 9%	19
Greater than 9%	20

### **BOARD OF REVIEW**

The General Assembly created the Board of Review in S.L. 2011-401 to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Lower Appeals Department of DES. The Board consists of three members<sup>7</sup> appointed by the Governor and confirmed by the General Assembly. No members had been appointed to the Board prior to July 2013. In Section 21 of S.L. 2013-224, the General Assembly directed the Governor to make the appointments to the Board by September 1, 2013, and provided that the appointments made under the authority of this legislation would not require legislative confirmation. The Governor made the appointments on December 6, 2013. The Committee expressed concern about the proper constitution of the Board during the 2013-14 interim. The Committee recommended to the 2014 General Assembly amending S.L. 2013-224 to extend

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<sup>7</sup> One member of the Board represents employers, one member represents employees, and one member represents the general public. The member representing the general public is designated as the chair of the Board and must be a licensed attorney. G.S. 96-4(b).

the date by which the Governor needed to make the appointments to remove any ambiguity or uncertainty about the proper constitution of the Board. House Bill 1069 of the 2014 Session would also have remedied any ambiguity by repealing Section 21 of S.L. 2013-224 and legislatively designating the Governor's appointees to serve on the Board of Review. House Bill 1069 included an amendment to G.S. 96-4(b) that would create staggered three-year terms for the Board members. The General Assembly ratified House Bill 1069, but the Governor vetoed House Bill 1069 citing the following as the reason: "... *there are unacceptable provisions which stagger and shorten terms of current lawfully seated members.*"

The Committee remains concerned about the proper constitution of the Board of Review and remains committed to the policy of staggered terms for the Board members. Legislative Proposals #3, #4, and #5 are joint resolutions confirming the individuals the Governor appointed to serve on the Board of Review. Legislative Proposal #6 ratifies higher appeal decisions made since November 1, 2011, clarifies the appointment process for members of the Board of Review, and creates staggered three-year terms for the Board. The Committee also recommends transferring four attorney positions and one paralegal position from DES to the Board of Review to ensure the Board has sufficient staff to support its responsibilities for administering the UI program as required by State law and by federal laws and guidelines. Legislative Proposal #7 contains the Special Provision language. The Governor sent a letter to members of the Committee expressing his "*strong objections to the renewed efforts to change members and reporting relationships of legal staff to the Board of Review.*" A copy of the letter is contained in Appendix D.

## OTHER ISSUES CONSIDERED BY THE COMMITTEE

### *Wilson v. Division of Employment Security*

Beginning in 2004, in response to a public records request, DES made notices of unemployment appeals hearings available on a daily basis to anyone who made a proper request under the North Carolina Public Records Act and paid a copying fee authorized under G.S. 132-6.2. In February 2014, the availability policy was changed to provide the notices to as few as three days per month, and the fee for them was increased. Monica Wilson, an attorney whose law practice consisted primarily of representing parties in unemployment hearings, and her law firm, immediately filed suit in Wake County, alleging a violation of North Carolina's public records laws.

On March 7, 2014, US DOL sent Assistant Secretary Folwell a cease-and-desist letter, stating that disclosure of the notices of hearing constitutes a failure to comply with Federal laws and regulations relating to confidentiality of unemployment compensation information. The US DOL warned that continuing to provide the notices could affect the Federal Unemployment Tax Act tax rate of the State's employers and jeopardize the State's receipt of Title III grant funds, which pay for the administrative operations of the State's UI program, totaling approximately \$55M per year. In conversations with General Assembly staff, US DOL personnel stated that although the State's UC law was in conformity with federal regulations, the agency's practices raised an issue of compliance with federal regulations.

US DOL requested assurance that the State would pursue this case through the courts in order to assure nondisclosure of documents that contain confidential UC information, while suggesting, "Legislation is the cleanest solution." As a result, the Committee recommended modifications to the



confidentiality provisions of the State unemployment insurance law and the public records law to the 2014 General Assembly in House Bill 1069. Wake County Superior Court Judge Paul Ridgeway noted that the changes proposed in the legislation would likely render the court case moot. The General Assembly ratified House Bill 1069 on June 23rd and sent it to the Governor, who vetoed it the next day, citing disagreement over appointments to the Board of Review. The confidentiality provision was included in drafts of other bills and was finally enacted in Senate Bill 42 as a stand-alone provision, and signed into law on August 25th as S.L. 2014-117.

During a hearing within days after the enactment of S.L. 2014-117, Judge Ridgeway gave the Plaintiffs 10 days to amend their complaint to allege a constitutional issue, if they chose to do so, saying that if they did, he intended to refer to the case to a three-judge panel created under recent changes to G.S. 1-267.1. On September 8, 2014, the Plaintiffs filed a second amended complaint, adding an allegation that the law was unconstitutional both on its face and as applied, on the grounds that it violates constitutional provisions relating to separation of powers and open courts.

A hearing was scheduled in Wake County Superior Court in November 2014 in order for the judge to make decisions regarding summary judgment, facial challenges to S.L. 2014-117, and attorneys' fees. The parties were asked to prepare for another hearing in late December; however, that hearing did not occur, and the judge requested briefs on specified issues. The next hearing in Superior Court is scheduled for January 8, 2015. The constitutional issues have not yet been referred to the three-judge panel. As of the date of this report, motions for summary judgment are pending in Wake County Superior Court, and the North Carolina Court of Appeals has notified the parties that it will review interlocutory (interim) issues, without oral argument, in early January.

The Committee will continue to monitor the case of *Wilson v. Division of Employment Security*. Accordingly, DES must periodically provide the Committee with updates related to the status of the proceedings. The Committee will recommend any legislation necessary to ensure the State's compliance with any federal laws, rules, regulations, and US DOL directives related to the proper administration of the State's UI program.

### **State Advisory Council**

The statutory authority creating the State Advisory Council has existed for more than 15 years. However, it is unclear whether or not members have ever been appointed to it. The purpose of the Council is to aid DES in formulating policies and discussing problems related to the administration of UI laws.

The Council is composed of 15 members representing employers, employees, and the general public. Prior to 2011, the Governor appointed all 15 members. In S.L. 2011-401, the General Assembly made the policy decision to retain the Council and to change the appointment of its members to five members appointed by the Governor, five members appointed by the President Pro Tempore of the Senate, and five appointed by the Speaker of the House of Representatives. The Committee learned that none of the appointing authorities have appointed members to the Council. Assistant Secretary Folwell questioned the need for the Council and suggested that the authority for the Council be repealed. However, the Committee continues to believe the Council could provide a service if the appointments were made. The Committee recommends that the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives appoint members to the State Advisory Council as soon as practicable.

## COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

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The Joint Legislative Oversight Committee on Unemployment Insurance recommends that the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives appoint members to the State Advisory Council as soon as practicable.

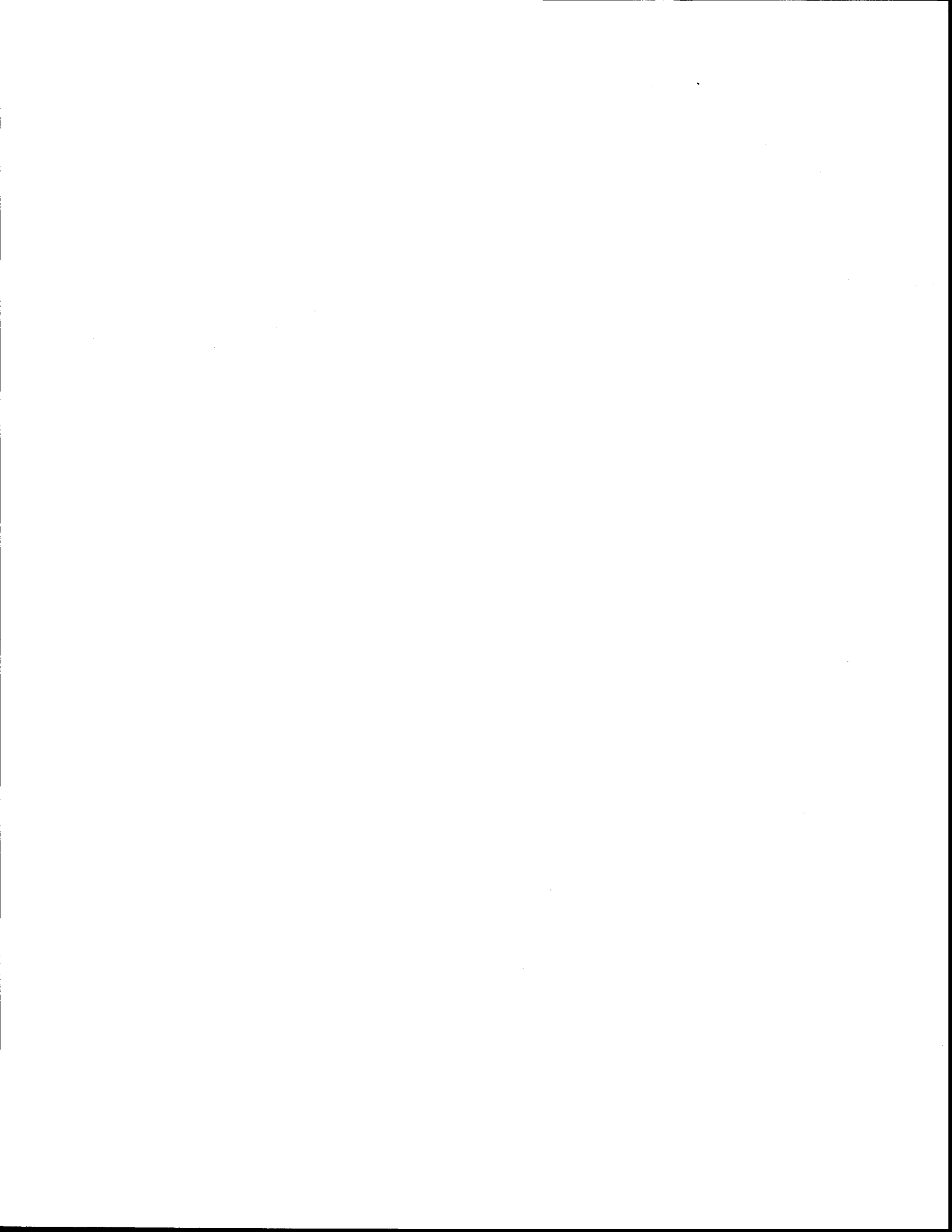
The Joint Legislative Oversight Committee on Unemployment Insurance recommends the following legislative proposals to the 2015 General Assembly:

1. AN ACT TO AMEND THE UNEMPLOYMENT INSURANCE LAWS, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.
2. AN ACT RELATING TO UNEMPLOYMENT INSURANCE PROGRAM INTEGRITY ENHANCEMENT THROUGH UTILIZATION OF THE STATE'S BUSINESS INTELLIGENCE AND DATA ANALYTICS, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.
3. A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF STANLEY CAMPBELL TO THE BOARD OF REVIEW, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.
4. A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF JEANETTE DORAN TO THE BOARD OF REVIEW, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.
5. A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF KEITH HOLLIDAY TO THE BOARD OF REVIEW, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.

6. AN ACT TO RATIFY PAST UNEMPLOYMENT INSURANCE APPEALS DECISIONS, TO AMEND THE APPOINTMENT PROCESS FOR THE BOARD, AND TO CREATE STAGGERED TERMS FOR MEMBERS OF THE BOARD OF REVIEW, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.
7. SPECIAL PROVISION: UI/BOR ATTORNEY TRANSFERS AND FUND

**LEGISLATIVE PROPOSAL #1:**

**Unemployment Insurance Law Changes**



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

U

D

BILL DRAFT 2015-TMz-1A [v.7] (11/10)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

1/5/2015 11:21:56 AM

Short Title: Unemployment Insurance Law Changes.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE UNEMPLOYMENT INSURANCE LAWS, AS  
3 RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON  
4 UNEMPLOYMENT INSURANCE.  
5

6 The General Assembly of North Carolina enacts:  
7

8 **PART I: AUTHORIZING DMV TO DISCLOSE SOCIAL SECURITY NUMBERS;**  
9 **REQUIRING UI CLAIMANTS TO CONTACT FIVE POTENTIAL EMPLOYERS PER**  
10 **WEEK; AND ELIMINATING THE PROCEDURE TO REQUEST**  
11 **RECONSIDERATION OF DECISIONS.**

12 **SECTION 1.1.** G.S. 20-7(b2) is amended by adding a new subdivision to read:

13 "(b2) Disclosure of Social Security Number. – The social security number of an applicant  
14 is not a public record. The Division may not disclose an applicant's social security number  
15 except as allowed under federal law. A violation of the disclosure restrictions is punishable as  
16 provided in 42 U.S.C. § 408, and amendments to that law.

17 In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division  
18 may disclose a social security number obtained under subsection (b1) of this section only as  
19 follows:  
20

21 . . .

22 "(7) To the Department of Commerce, Division of Employment Security, for the  
23 purpose of verifying employer and claimant identity."

24 **SECTION 1.2.(a)** G.S. 96-9.2(c) reads as rewritten:

25 "(c) Contribution Rate for Experience-Rated Employer. – The contribution rate for an  
26 experience-rated employer who does not qualify as a beginning employer under subsection (b)  
27 of this section is determined in accordance with the table set out below and then rounded to the  
28 nearest one-hundredth percent (0.01%), subject to the minimum and maximum contribution  
29 rates. The minimum contribution rate is six-hundredths of one percent (0.06%). The maximum  
30 contribution rate is five and seventy-six hundredths percent (5.76%). "Total insured wages" are  
31 the total wages reported by all insured employers for the 12-month period ending on ~~July 31~~  
32 June 30 preceding the computation date. An employer's experience rating is computed as a  
33 reserve ratio in accordance with G.S. 96-9.4. An employer's reserve ratio percentage (ERRP) is  
34 the employer's reserve ratio multiplied by sixty-eight hundredths. A positive ERRP produces a  
lower contribution rate, and a negative ERRP produces a higher contribution rate.

1 ...."

2 **SECTION 1.2.(b)** This section is effective when it becomes law and applies to  
3 contributions payable for calendar quarters beginning on or after January 1, 2014.

4 **SECTION 1.3.(a)** G.S. 96-14.9(e) reads as rewritten:

5 "(e) **Actively Seeking Work.** – The Division's determination of whether an individual is  
6 actively seeking work is based upon the following:

- 7 (1) The individual is registered for employment services, as required by the  
8 Division.
- 9 (2) The individual has engaged in an active search for employment that is  
10 appropriate in light of the employment available in the labor market and the  
11 individual's skills and capabilities.
- 12 (3) The individual has ~~sought work on at least two different days during the~~  
13 ~~week and made at least two five job contacts with potential~~  
14 ~~employers.employers during the week.~~
- 15 (4) The individual has maintained a record of the individual's work search  
16 efforts. The record must include the potential employers contacted, the  
17 method of contact, and the date contacted. The individual must provide the  
18 record to the Division upon request."

19 **SECTION 1.3.(b)** This section becomes effective July 1, 2015, and applies to  
20 claims for benefits filed on or after that date.

21 **SECTION 1.4.(a)** G.S. 96-15(h) reads as rewritten:

22 "(h) **Judicial Review.** – ~~Any A decision of the Division, in the absence of judicial review~~  
23 ~~as herein provided, or in the absence of an interested party filing a request for reconsideration,~~  
24 ~~shall become Board of Review becomes final 30 days after the date of notification or mailing~~  
25 ~~thereof, whichever is earlier, unless a party to the decision seeks judicial review as provided in~~  
26 ~~this subsection.~~ Judicial review shall be is permitted only after a party claiming to be aggrieved  
27 by the decision has exhausted his remedies before the Division as provided in this Chapter the  
28 remedies provided in this Chapter and has filed a petition for review in the superior court of the  
29 county in which he the petitioner resides or has his the county in which the petitioner's principal  
30 place of business. business is located. The petition for review shall must explicitly state what  
31 exceptions are taken to the decision or procedure of the Division and what relief the petitioner  
32 seeks. Within 10 days after the petition is filed with the court, the petitioner shall must serve  
33 copies of the petition by personal service or by certified mail, return receipt requested, upon the  
34 Division and upon all parties of record to the Division proceedings. The Division must furnish  
35 the petitioner the names Names and addresses of the parties shall be furnished to the petitioner  
36 by the Division upon request. The Division shall be deemed to be is a party to any judicial  
37 action involving any of its decisions and may be represented in the judicial action by any  
38 qualified attorney who has been designated by it for that purpose. Any questions regarding the  
39 requirements of this subsection concerning the service or filing of a petition shall must be  
40 determined by the superior court. Any party to the Division proceeding may become a party to  
41 the review proceeding by notifying the court within 10 days after receipt of the copy of the  
42 petition. Any person aggrieved may petition to become a party by filing a motion to intervene  
43 as provided in G.S. 1A-1, Rule 24.

44 Within 45 days after receipt of the copy of the petition for review or within such additional  
45 time as the court may allow, the Division ~~shall must~~ transmit to the reviewing court the original  
46 or a certified copy of the entire record of the proceedings under review. With the permission of  
47 the court the record may be shortened by stipulation of all parties to the review proceedings.  
48 Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for  
49 ~~such the additional cost as is occasioned incurred~~ by the refusal. The court may require or



1 permit subsequent corrections or additions to the record when ~~deemed~~ the court considers the  
2 changes desirable."

3 **SECTION 1.4.(b)** This section becomes effective July 1, 2015, and applies to  
4 decisions made on or after that date.

5 **SECTION 1.5.(a)** G.S. 96-3 reads as rewritten:

6 "**§ 96-3. Division of Employment Security.**

7 The Division of Employment Security (DES) is created within the Department of  
8 Commerce and shall administer the provisions of this Chapter under the supervision of the  
9 Assistant Secretary of ~~Commerce~~ Commerce ~~through two coordinate sections: the Employment~~  
10 ~~Security Section and the Employment Insurance Section. The Employment Security Section~~  
11 ~~shall administer the employment services functions of the Division. The Employment Insurance~~  
12 ~~Section shall administer the unemployment taxation and assessment functions of the Division."~~

13 **SECTION 1.5.(b)** G.S. 96-4(j) reads as rewritten:

14 "(j) Hearings. – The Assistant Secretary shall appoint hearing officers or appeals  
15 referees to hear contested matters arising from the ~~Employment Security Section and the~~  
16 ~~Employment Insurance Section.~~ Division of Employment Security. Appeals from the decisions  
17 of the hearing officers or appeals referees shall be heard by the Board of Review."

18 **SECTION 1.5.(c)** G.S. 96-9.15(f) reads as rewritten:

19 "(f) Domestic Employer Exception. – The Division may authorize an employer of  
20 domestic service employees to file an annual report and to file that report by telephone. An  
21 annual report allowed under this subsection is due on or before the last day of the month  
22 following the close of the calendar year in which the wages are paid. A domestic service  
23 employer that files a report by telephone must contact either the tax auditor assigned to the  
24 employer's account or the ~~Employment Insurance Section~~ Division of Employment Security in  
25 Raleigh and report the required information to that auditor or to that section by the date the  
26 report is due."

## 27 28 **PART II: GARNISHMENT AND ATTACHMENT FOR THE COLLECTION OF** 29 **UNPAID UI TAXES**

30 **SECTION 2.1.(a)** G.S. 1-359 reads as rewritten:

31 "**§ 1-359. Debtors of judgment debtor may satisfy execution.**

32 "(a) After the issuing of an execution against property, all persons indebted to the  
33 judgment debtor, or to any one of several debtors in the same judgment, may pay to the sheriff  
34 the amount of their debt, or as much thereof as is necessary to satisfy the execution; and the  
35 sheriff's receipt is a sufficient discharge for the amount paid.

36 "(b) When the Division of Employment Security of the Department of Commerce  
37 (Division) prevails in a civil action against an employer to collect unpaid employment taxes  
38 under G.S. 96-10(b), the Division may attach or garnish the employer's credit card receipts or  
39 other third-party payments in payment of the unpaid taxes in the manner provided by  
40 subsection (a) of this section. Direct receipt by the Division is a sufficient discharge for the  
41 amount paid by a credit card company, clearinghouse, or third party payment processor."

42 **SECTION 2.1.(b)** G.S. 96-10(b)(1) reads as rewritten:

43 "(b) Collection. –

44 (1) If, after due notice, any employer defaults in any payment of contributions or  
45 interest thereon, the amount due shall be collected by civil action in the  
46 name of the Division, and the employer adjudged in default shall pay the  
47 costs of such action. Civil actions brought under this section to collect  
48 contributions or interest thereon from an employer shall be heard by the  
49 court at the earliest possible date, and shall be entitled to preference upon the  
50 calendar of the court over all other civil actions, except petitions for judicial

1 review under this Chapter and cases arising under the Workers'  
2 Compensation Law of this State; or, if any contribution imposed by this  
3 Chapter, or any portion thereof, and/or penalties duly provided for the  
4 nonpayment thereof shall not be paid within 30 days after the same become  
5 due and payable, and after due notice and reasonable opportunity for  
6 hearing, the Division, under the hand of the Assistant Secretary, may certify  
7 the same to the clerk of the superior court of the county in which the  
8 delinquent resides or has property, and additional copies of said certificate  
9 for each county in which the Division has reason to believe the delinquent  
10 has property located. If the amount of a delinquency is less than fifty dollars  
11 (\$50.00), the Division may not certify the amount to the clerk of court until a  
12 field tax auditor or another representative of the Division personally  
13 contacts, or unsuccessfully attempts to personally contact, the delinquent and  
14 collect the amount due. A certificate or a copy of a certificate forwarded to  
15 the clerk of the superior court shall immediately be docketed and indexed on  
16 the cross index of judgments, and from the date of such docketing shall  
17 constitute a preferred lien upon any property which said delinquent may own  
18 in said county, with the same force and effect as a judgment rendered by the  
19 superior court. The Division shall forward a copy of said certificate to the  
20 sheriff or sheriffs of such county or counties, or to a duly authorized agent of  
21 the Division, and when so forwarded and in the hands of such sheriff or  
22 agent of the Division, shall have all the force and effect of an execution  
23 issued to such sheriff or agent of the Division by the clerk of the superior  
24 court upon a judgment of the superior court duly docketed in said county.  
25 Provided, however, the Division may in its discretion withhold the issuance  
26 of said certificate or execution to the sheriff or agent of the Division for a  
27 period not exceeding 180 days from the date upon which the original  
28 certificate is certified to the clerk of superior court. The Division is further  
29 authorized and empowered to issue alias copies of said certificate or  
30 execution to the sheriff or sheriffs of such county or counties, or to a duly  
31 authorized agent of the Division in all cases in which the sheriff or duly  
32 authorized agent has returned an execution or certificate unsatisfied; when so  
33 issued and in the hands of the sheriff or duly authorized agent of the  
34 Division, such alias shall have all the force and effect of an alias execution  
35 issued to such sheriff or duly authorized agent of the Division by the clerk of  
36 the superior court upon a judgment of the superior court duly docketed in  
37 said county. Provided, however, that notwithstanding any provision of this  
38 subsection, upon filing one written notice with the Division, the sheriff of  
39 any county shall have the sole and exclusive right to serve all executions and  
40 make all collections mentioned in this subsection and in such case no agent  
41 of the Division shall have the authority to serve any executions or make any  
42 collections therein in such county. A return of such execution, or alias  
43 execution, shall be made to the Division, together with all moneys collected  
44 thereunder, and when such order, execution, or alias is referred to the agent  
45 of the Division for service the said agent of the Division shall be vested with  
46 all the powers of the sheriff to the extent of serving such order, execution or  
47 alias and levying or collecting thereunder. The agent of the Division to  
48 whom such order or execution is referred shall give a bond not to exceed  
49 three thousand dollars (\$3,000) approved by the Division for the faithful  
50 performance of such duties. The liability of said agent shall be in the same

1 manner and to the same extent as is now imposed on sheriffs in the service  
2 of executions. If any sheriff of this State or any agent of the Division who is  
3 charged with the duty of serving executions shall willfully fail, refuse, or  
4 neglect to execute any order directed to him by the said Division and within  
5 the time provided by law, the official bond of such sheriff or of such agent of  
6 the Division shall be liable for the contributions, penalty, interest, and costs  
7 due by the employer. Any judgment that is executable and allowed under  
8 this section shall be subject to attachment and garnishment under  
9 G.S. 1-359(b) in payment of unpaid taxes that are due from the employer  
10 and collectable under this Article."

11  
12 **PART III: REQUIRE PHOTO IDENTIFICATION TO RECEIVE UI BENEFITS**

13 **SECTION 3.1.** G.S. 96-14.9 reads as rewritten:

14 **"§ 96-14.9. Weekly certification.**

15 (a) Requirements. – An individual's eligibility for a weekly benefit amount is  
16 determined on a week-to-week basis. An individual must meet all of the requirements of this  
17 section for each weekly benefit period. An individual who fails to meet one or more of the  
18 requirements is ineligible to receive benefits until the condition causing the ineligibility ceases  
19 to exist:

- 20 (1) File a claim for benefits.  
21 (2) Report ~~at an employment office as requested by the Division.~~ Division and  
22 present valid photo identification meeting the requirements of subsection (k)  
23 of this section.  
24 (3) Meet the work search requirements of subsection (b) of this section.

25 ...  
26 (k) Photo Identification. – The individual must present the Division one of the  
27 following documents bearing the individual's photograph:

- 28 (1) A drivers license, learner's permit, provisional license, or nonoperators  
29 identification card issued by North Carolina, another state, the District of  
30 Columbia, United States territory, or United States commonwealth.  
31 (2) A United States passport.  
32 (3) A United States military identification card.  
33 (4) A Veterans Identification Card issued by the United States Department of  
34 Veterans Affairs.  
35 (5) A tribal enrollment card issued by a federally recognized tribe.  
36 (6) Any other document that the Division determines adequately identifies the  
37 individual and issued by the United States, any state, the District of  
38 Columbia, United States territory, or United States commonwealth."

39  
40 **PART IV: EXTEND DEADLINE FOR ADOPTION OF DIVISION OF**  
41 **EMPLOYMENT SECURITY RULES**

42 **SECTION 4.1.** Section 1.10(c) of S.L. 2011-401 reads as rewritten:

43 **"SECTION 1.10.(c)** The Department of Commerce, Division of Employment Security,  
44 shall adopt ~~all existing rules and regulations in accordance with Article 2A of Chapter 150B of~~  
45 ~~the General Statutes. Any existing rule that has not been readopted by December 31, 2012,~~  
46 ~~April 20, 2015,~~ shall expire."

47  
48 **PART V: SET THE DURATION OF UNEMPLOYMENT BENEFITS BASED ONLY**  
49 **ON UNEMPLOYMENT RATES**

50 **SECTION 5.1.(a)** G.S. 96-14.4 is repealed.

1                   **SECTION 5.1.(b)** G.S. 96-14.3 reads as rewritten:

2   "**§ 96-14.3. ~~Minimum and maximum duration~~ Duration of benefits.**

3       (a)   Duration. – ~~The minimum and maximum~~ number of weeks an individual is allowed  
4 to receive unemployment benefits depends on the seasonal adjusted statewide unemployment  
5 rate that applies to the six-month base period in which the claim is filed. One six-month base  
6 period begins on January 1 and one six-month base period begins on July 1. For the base period  
7 that begins January 1, the average of the seasonal adjusted unemployment rates for the State for  
8 the preceding months of July, August, and September applies. For the base period that begins  
9 July 1, the average of the seasonal adjusted unemployment rates for the State for the preceding  
10 months of January, February, and March applies. The Division must use the most recent  
11 seasonal adjusted unemployment rate determined by the U.S. Department of Labor, Bureau of  
12 Labor Statistics, and not the rate as revised in the annual benchmark. ~~The number of weeks~~  
13 ~~allowed for an individual is determined in accordance with G.S. 96-14.4.~~

14 <b>Seasonal Adjusted</b>	14 <b>Minimum Number</b>	14 <b>Maximum Number</b>
15 <b>Unemployment Rate</b>	15 <b>of Weeks</b>	15 <b>of Weeks</b>
16       Less than or equal to 5.5%	16       5	16       12
17       Greater than 5.5% up to 6%	17       6	17       13
18       Greater than 6% up to 6.5%	18       7	18       14
19       Greater than 6.5% up to 7%	19       8	19       15
20       Greater than 7% up to 7.5%	20       9	20       16
21       Greater than 7.5% up to 8%	21       10	21       17
22       Greater than 8% up to 8.5%	22       11	22       18
23       Greater than 8.5% up to 9%	23       12	23       19
24       Greater than 9%	24       13	24       20

25       (b)   Total Benefits. – The total benefits paid to an individual equals the individual's  
26 weekly benefit amount allowed under G.S. 96-14.2 multiplied by the number of weeks allowed  
27 under subsection (a) of this section."

28                   **SECTION 5.1.(c)** G.S. 96-14.12(b) reads as rewritten:

29       (b)   Duration of Benefits. – This subsection applies to an individual and the spouse of an  
30 individual who is unemployed based on services performed for a corporation in which the  
31 individual held five percent (5%) or more of the outstanding shares of the voting stock of the  
32 corporation. The maximum number of weeks an individual or an individual's spouse may  
33 receive benefits is ~~limited to the lesser of six weeks or the applicable weeks determined under~~  
34 ~~G.S. 96-14.4 weeks."~~

35                   **SECTION 5.1.(d)** G.S. 96-16(f) reads as rewritten:

- 36       (f)   (1)   A seasonal worker shall be eligible to receive benefits based on seasonal  
37 wages only for a week of unemployment which occurs, or the greater part of  
38 which occurs within the active period or periods of the seasonal pursuit or  
39 pursuits in which he earned base period wages.
- 40       (2)   A seasonal worker shall be eligible to receive benefits based on nonseasonal  
41 wages for any week of unemployment which occurs during any active period  
42 or periods of the seasonal pursuit in which he has earned base period wages  
43 provided he has exhausted benefits based on seasonal wages. Such worker  
44 shall also be eligible to receive benefits based on nonseasonal wages for any  
45 week of unemployment which occurs during the inactive period or periods  
46 of the seasonal pursuit in which he earned base period wages irrespective as  
47 to whether he has exhausted benefits based on seasonal wages.
- 48       (3)   The maximum amount of benefits which a seasonal worker shall be eligible  
49 to receive based on seasonal wages shall be an amount, adjusted to the  
50 nearest multiple of one dollar (\$1.00), determined by multiplying the  
51 maximum benefits payable in his benefit year, as provided in ~~G.S. 96-14.4,~~  
52 G.S. 96-14.3, by the percentage obtained by dividing the seasonal wages in  
53 his base period by all of his base period wages.
- 54       (4)   The maximum amount of benefits which a seasonal worker shall be eligible  
55 to receive based on nonseasonal wages shall be an amount, adjusted to the  
56 nearest multiple of one dollar (\$1.00), determined by multiplying the  
57 maximum benefits payable in his benefit year, as provided in ~~G.S. 96-14.4,~~

1 | G.S. 96-14.3, by the percentage obtained by dividing the nonseasonal wages  
2 | in his base period by all of his base period wages.

- 3 | (5) In no case shall a seasonal worker be eligible to receive a total amount of  
4 | benefits in a benefit year in excess of the maximum benefits payable for  
5 | such benefit year, as provided in ~~G.S. 96-14.4~~G.S. 96-14.3."

6 | **SECTION 5.1.(e)** This section becomes effective July 1, 2015. Changes made by  
7 | this section to unemployment benefits apply to claims for benefits filed on or after July 1, 2015.

8 |  
9 |  
10 | **PART VI: EFFECTIVE DATE**

11 | **SECTION 6.1.** Except as otherwise provided, this act is effective when it becomes  
12 | law.





## Bill Draft 2015-TMz-1A: Unemployment Insurance Law Changes.

2013-2014 General Assembly

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<b>Committee:</b>	Joint Legislative Oversight Committee on Unemployment Insurance	<b>Date:</b>	December 31, 2014
<b>Introduced by:</b>		<b>Prepared by:</b>	UI Team
<b>Analysis of:</b>	2015-TMz-1A		

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**SUMMARY:** *The bill draft would make the following changes to the unemployment insurance (UI) laws:*

- *Authorize the Division of Motor Vehicles (DMV) to disclose social security numbers to Division of Employment Security (DES) for the purpose of verifying employer and claimant identity.*
- *Require UI claimants to contact 5 potential employers per week.*
- *Eliminate the procedure to request reconsideration of DES decisions.*
- *Clarify DES authority to garnish and attach the credit card receipts of delinquent taxpayers.*
- *Require photo identification to receive UI benefits.*
- *Extend the deadline for the adoption of DES rules.*
- *Set the duration of unemployment benefits based only on unemployment rates.*
- *Make other technical changes to modernize language and fix statutory references to DES.*

### **BILL ANALYSIS:**

**Part I** would do the following:

- Authorize DMV to disclose social security numbers to DES. The social security numbers are disclosed for the purpose of verifying employer and claimant identity. DMV obtains social security numbers upon an individual's application for an identification card, learners permit, or driver's license. It may only disclose the numbers as permitted by federal and State laws.
- Make a technical change to move the date for the calculation of tax rates for certain employers from July 31 to June 30. The calculation is based on a 12-month period, and June 30 is the end of the calendar quarter. This change would become effective for contributions payable for calendar quarters beginning on or after January 1, 2014

- Modify the work search requirement by increasing the number of job contacts a claimant must make each week from two to five and by eliminating the requirement that the claimant must make those contacts on two different days. To receive UI benefits, a claimant must be actively searching for work. Under current law, a claimant is considered to be actively searching for work if the claimant makes two job contacts with potential employers on two different days during a week. This change would become effective July 1, 2015.
- Eliminate the procedure to request reconsideration of decisions of DES and modernize the language of G.S. 96-15(h). Under current law, a party to any decision of DES may request reconsideration of the decision. The decision is not final until the request for reconsideration has been decided. This change would become effective July 1, 2015.
- Correct statutory references to the Division of Employment Security.

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

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

This Part makes the current administrative practice a statutory eligibility requirement to receive UI benefits. The Part would become effective when it becomes law. Valid photo identification requires the individual's photograph and must be one of the following documents:

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



**Part IV** would extend the deadline for adoption of DES rules from December 31, 2012, to February 9, 2015. DES has largely been conducting its business in the absence of any rules governing its practices and procedures since December 31, 2012. DES reported that it believed it would be in a position to submit its proposed rules to Office of Administrative Hearings (OAH) by February 9, 2015. After the rules are submitted to OAH, the 60-day public comment period will begin. Given that the rules will codify the current practices the agency, few to no comments are expected. It is anticipated the rules will be placed on the May agenda of the Rules Review Commission and become effective July 1, 2015. This Part would become effective when it becomes law.

In 2011, the General Assembly created the Division of Employment Security within the N.C. Department of Commerce and transferred all of the functions and operations of the former Employment Security Commission to DES, effective November 1, 2011. In addition to the merger and consolidation, S.L. 2011-401 made DES subject to rulemaking under North Carolina's Administrative Procedure Act; the Employment Security Commission had been exempt from rule-making. In recognition of this different policy decision, Section 1.10(c) of S.L. 2011-401 directed DES to "adopt all existing rules and regulations in accordance with Article 2A of Chapter 150B of the General Statutes. Any existing rule that has not been readopted by December 31, 2012, shall expire," thereby allowing DES 18 months to adopt rules.\*

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

**Part V** sets the duration formula for unemployment benefits, which is used to determine the number of weeks of eligibility, based only on unemployment rates. Under current law, the duration formula is based on two factors: the unemployment rate and attachment to workforce. This Part would become effective July 1, 2015, and apply to claims for unemployment benefits filed on or after that date.

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

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

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

claimant receives the minimum. Similarly, if the formula results in a number higher than the range maximum, the claimant receives the maximum.

During the 2013-2014 interim, DES determined that the duration formula did not yield results less than 17 weeks. Therefore, when the maximum number of weeks based on the unemployment rate is 17 or less, claimants receive the maximum because the formula does not yield any results within the range. To address this issue, the Joint Legislative Oversight Committee on Unemployment Insurance recommended that the duration of unemployment benefits be based solely on the unemployment rate. The 2014 General Assembly ratified this solution in House Bill 1069, but the Governor vetoed the bill for reasons unrelated to this change. During the 2014 interim, the Oversight Committee re-considered the duration formula and recommends the same resolution as it did in 2014. While this change may eliminate attachment to workforce as a factor in measuring duration, attachment to the workforce remains a factor in the calculation of the Weekly Benefit Amount (WBA) because the formula for the WBA is based on the wages received in the most recent two quarters.

*UI Team: Cindy Avrette, Janice Paul, and Greg Roney with the Research Division; Phyllis Pickett with the Bill Drafting Division; Rodney Bizzell and Aubrey Incorvaia with the Fiscal Research Division.*

## **LEGISLATIVE PROPOSAL #2**

### **Enhance UI Program Integrity/Reporting**



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H/S

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BILL DRAFT 2015-LRz-15B\* [v.1] (12/08)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

1/5/2015 10:18:35 AM

Short Title: Enhance UI Program Integrity/Reporting. (Public)

Sponsors: Representative Howard./Senator Rucho (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT RELATING TO UNEMPLOYMENT INSURANCE PROGRAM INTEGRITY  
ENHANCEMENT THROUGH UTILIZATION OF THE STATE'S BUSINESS  
INTELLIGENCE AND DATA ANALYTICS, AS RECOMMENDED BY THE JOINT  
LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 96 of the General Statutes is amended by adding a Article to  
read:

"Article 5.

"Miscellaneous Provisions.

**"§ 96-35. Unemployment insurance program integrity; reporting.**

(a) Findings and Purpose. – The General Assembly finds that program integrity  
measures have been implemented by the Division to maximize the efficiency and effectiveness  
of the State's unemployment insurance program. The purpose of this section is to assure that  
these efforts shall include the rigorous and consistent use of business intelligence and data  
analytics for enhanced unemployment insurance program integrity.

(b) Required Activities. – To achieve the program integrity enhancements required by  
this section, at a minimum, the Division shall do all of the following:

(1) Prioritize Division program integrity efforts that maximize utilization of and  
information sharing with or between these projects and initiatives in order to  
prevent, detect, and reduce unemployment insurance fraud, improper  
payments, overpayments, and other programmatic irregularities:

a. Government Data Analytics Center (GDAC);

b. Southeast Consortium Unemployment Insurance Benefits Initiative  
(SCUBI); and,

c. Any other program integrity capabilities identified by the Division.

(2) Coordinate efforts with the Office of Information Technology Services to  
ensure that the Division identifies and integrates into its operations and  
procedures the most effective and accurate processes and scalable tools  
available to prevent payment of fraudulent, suspicious, or irregular claims.

(3) Coordinate efforts with the Department of Revenue to enhance alerts  
indicating circumvention of the payment of unemployment insurance taxes.

1           (4) Coordinate efforts with the Department of Health and Human Services to  
2 facilitate claims cross-matching and other appropriate steps to enhance  
3 program integrity.

4           (5) Coordinate efforts with the Office of State Controller to facilitate  
5 cross-matching and other appropriate steps using BEACON (Building  
6 Enterprise Access for North Carolina's Core Operation Needs).

7           (c) Quarterly Reporting. – Beginning April 1, 2015, and then quarterly thereafter, the  
8 Division shall make detailed written progress reports on its efforts to carry out all of the  
9 directives in this section to the Chairs of the Joint Legislative Oversight Committee on  
10 Unemployment Insurance, the Chairs of the Joint Legislative Oversight Committee on  
11 Information Technology, the Chairs of the House Appropriations Subcommittee on Natural and  
12 Economic Resources, the Chairs of the Senate Appropriations Committee on Natural and  
13 Economic Resources, and the Fiscal Research Division. At a minimum, the quarterly report  
14 shall include all of the following:

15           (1) Metrics regarding unemployment benefits overpayments, improper  
16 payments, and fraudulent payments, in terms of both percentage and dollar  
17 amount.

18           (2) Information on fraud perpetrator metrics, in terms of percent and value, by  
19 type (whether by employer or claimant), and activity subcategory, such as  
20 employee misclassification, unemployment insurance tax rate manipulation  
21 (SUTA dumping), fictitious employers, fictitious claimants, deceased  
22 claimants, incarcerated claimants, work and earn, and similar activities.

23           (3) Quantified investigation activity, including the:

24           a. Type and subcategory of investigations.

25           b. Number of alerts received and from what system (whether GDAC) or  
26 others).

27           c. Number of alerts investigated (including from which system the alert  
28 was generated).

29           d. Associated value (of both the amount of benefits paid and the amount  
30 that was prevented from being paid).

31           e. Number of false positives.

32           f. Number of dispositions entered (including into which system).

33           (d) Annual Reporting. – Beginning January 1, 2016, the Division shall make an annual  
34 report to the General Assembly on its efforts to carry out all of the directives in this section. At  
35 a minimum, each annual report shall include all of the following information:

36           (1) The methodology used by Division to determine analytic priorities for  
37 unemployment insurance program integrity investigation.

38           (2) A report on the State's Benefit Accuracy Measurement (BAM) as required  
39 by the U.S. Department of Labor, including how North Carolina's BAM has  
40 changed over time and how its current rate compares to other states. The  
41 report shall also include an update on BAM methodology and information  
42 regarding how it might be modified.

43           (3) An explanation of the Division's unemployment insurance program integrity  
44 activities in coordination with the Office of Information Technology  
45 Services, the Department of Health and Human Services, the Department of  
46 Revenue, and the Office of State Controller as required by subsection (b) of  
47 this section.

48           (4) Division workflows, both intra-agency and inter-agency, to address process  
49 problems and program integrity issues, including identification of tools,

1 resources, and plans for continued improvement of unemployment insurance  
2 program integrity efforts.

- 3 (5) An analysis of the information required by subsection (c) of this section  
4 along with an explanation of how that information will be used to augment  
5 the State's business intelligence and data analytics capabilities to prevent,  
6 detect, and reduce unemployment insurance fraud, improper payments,  
7 overpayments, and other programmatic irregularities."

8 **SECTION 2.** This act is effective when it becomes law.





**LEGISLATIVE PROPOSAL #3:**

**A Joint Resolution Providing for Confirmation of  
Stanley Campbell to the Board of Review**



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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BILL DRAFT 2015-RBz-3C [v.5] (11/21)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)**

1/5/2015 12:32:46 PM

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Sponsors: (Primary Sponsor).

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Referred to:

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1 A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF STANLEY CAMPBELL  
2 TO THE BOARD OF REVIEW, AS RECOMMENDED BY THE JOINT LEGISLATIVE  
3 OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.

4 Whereas, G.S. 96-4(b) directs the Governor to appoint a three-person Board of Review  
5 to determine appeals policies and procedures and to hear appeals arising from the decisions and  
6 determinations of the Division of Employment Security, Department of Commerce; and

7 Whereas, G.S. 96-4(b) provides that members of the Board of Review are subject to  
8 confirmation by the General Assembly; and

9 Whereas, G.S. 96-4(b) provides that one member of the Board of Review represents  
10 employers, one member represents employees, and one member represents the general public;  
11 and

12 Whereas, the Governor announced the following appointments to the Board of Review  
13 on December 6, 2013: Stanley Campbell, Jeanette Doran, and Keith Holliday; and

14 Whereas, the Governor did not submit to the General Assembly the names of any  
15 appointees to fill the terms of membership on the Board of Review; and,

16 Whereas, the Governor did not designate which appointee represented employers,  
17 which appointee represented employees, and which appointee represented the general public;  
18 and

19 Whereas, the General Assembly declares that the individuals the Governor appointed to  
20 the Board of Review are hereby deemed to be the names of the appointees submitted by the  
21 Governor to the General Assembly to fill the terms of membership on the Board of Review;  
22 and

23 Whereas, the General Assembly declares that Stanley Campbell is hereby deemed to be  
24 the appointee representing employees;

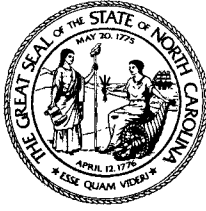
25 Now, therefore,

26  
27 Be it resolved by the Senate, the House of Representatives concurring:

28 **SECTION 1.** The appointment of Stanley Campbell to membership on the Board  
29 of Review as the member representing employees for a term beginning December 6, 2013, is  
30 confirmed.

31 **SECTION 2.** This resolution is effective upon ratification.





## Bill Draft 2015-RB-3C: Confirm Board of Review/Campbell.

2015-2016 General Assembly

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<b>Committee:</b>	Joint Legislative Oversight Committee on Unemployment Insurance	<b>Date:</b>	December 31, 2014
<b>Introduced by:</b>		<b>Prepared by:</b>	Cindy Avrette
<b>Analysis of:</b>	2015-RB-3C		Committee Counsel

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**SUMMARY:** *This resolution would confirm Stanley Campbell to serve as the member of the Board of Review representing employees.*

**CURRENT LAW:** US Department of Labor (US DOL) encourages states to provide a second level of review for decisions and determinations made by the Division of Employment Security (DES), but it does not require one. In 2011, the General Assembly created a Board of Review\* to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Lower Appeals Department of DES. The Board consists of three members appointed by the Governor and confirmed by the General Assembly: one member representing employers, one member representing employees, and one member representing the general public. The member representing the general public is designated as the chair of the Board and must be a licensed attorney.

**BILL ANALYSIS:** This Joint Resolution would designate Stanley Campbell as the Board of Review member that represents employees and it would confirm him as the Governor's appointee to serve on the Board of Review.

**EFFECTIVE DATE:** The resolution would become effective upon ratification. Under Article II, Sec. 22 of the North Carolina Constitution, joint resolutions and bills that make an appointment to a public office and contain no other matter become law upon being read three times in each house and signed by the presiding officer of both houses.

**BACKGROUND:** The General Assembly created the Board of Review in S.L. 2011-401, to become effective November 1, 2011. However, the 2011 General Assembly failed to set the salaries for the Board members and the Governor did not appoint members to the Board. In S.L. 2012-142, the Current Operations and Capital Improvements Appropriations Act of 2012, the General Assembly set the salaries for the Board members.† Although the budget became law on July 2, 2012, the appointments to the Board had not been made by June of 2013. In recognition that the appointments would not be made prior to the adjournment of the 2013 Session, the General Assembly enacted a one-time exception to the confirmation process. In Section 21 of

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\* G.S. 96-4(b).

† The chair receives an annual salary of \$122,255 and the remaining two members receive an annual salary of \$120,737.

S.L. 2013-224, the General Assembly directed the Governor to make the appointments to the Board by September 1, 2013, and provided that the initial appointments made under the authority of this section did not need to be confirmed by the General Assembly. The Governor appointed three individuals on December 6, 2013, to serve on the Board of Review: Stanley Campbell, Jeanette Doran, and Keith Holliday. The Governor did not designate who the individuals appointed represented.

The Joint Legislative Oversight Committee on Unemployment Insurance expressed concern about the proper constitution of the Board during the 2013-14 interim. The Committee found that the Governor did not appoint the members by September 1, 2013, and therefore the individuals appointed did not fall within the one-time exception to the confirmation process provided in S.L. 2013-224. The Committee recommended legislation to the 2014 General Assembly to remove any ambiguity or uncertainty about the proper constitution of the Board. The recommended legislation, contained in the first edition of House Bill 1069 of the 2014 Session, would have amended S.L. 2013-224 to extend the date by which the Governor could make initial appointments without legislative confirmation from September 1, 2013, to January 1, 2014. Under the ratified version of House Bill 1069, Section 21 of S.L. 2013-224 would have been repealed and the named individuals would have been legislatively designated to serve as the Governor's appointments to the Board. House Bill 1069 also included an amendment to G.S. 96-4(b) that would have created staggered three-year terms for the Board members. The Governor vetoed House Bill 1069 citing the following as the reason: "*... there are unacceptable provisions which stagger and shorten terms of current lawfully seated members.*"

The Joint Legislative Oversight Committee on Unemployment Insurance remains concerned about the proper constitution of the Board and the legal implications of that uncertainty.

**LEGISLATIVE PROPOSAL #4:**

**A Joint Resolution Providing for Confirmation of  
Jeanette Doran to the Board of Review**





GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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BILL DRAFT 2015-RBz-3D [v.5] (11/21)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)**

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Sponsors: (Primary Sponsor).

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Referred to:

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1 A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF JEANETTE DORAN TO  
2 THE BOARD OF REVIEW, AS RECOMMENDED BY THE JOINT LEGISLATIVE  
3 OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.

4 Whereas, G.S. 96-4(b) directs the Governor to appoint a three-person Board of Review  
5 to determine appeals policies and procedures and to hear appeals arising from the decisions and  
6 determinations of the Division of Employment Security, Department of Commerce; and

7 Whereas, G.S. 96-4(b) provides that members of the Board of Review are subject to  
8 confirmation by the General Assembly; and

9 Whereas, G.S. 96-4(b) provides that one member of the Board of Review represents  
10 employers, one member represents employees, and one member represents the general public;  
11 and

12 Whereas, the Governor announced the following appointments to the Board of Review  
13 on December 6, 2013: Stanley Campbell, Jeanette Doran, and Keith Holliday; and

14 Whereas, the Governor did not submit to the General Assembly the names of any  
15 appointees to fill the terms of membership on the Board of Review; and,

16 Whereas, the Governor did not designate which appointee represented employers,  
17 which appointee represented employees, and which appointee represented the general public;  
18 and

19 Whereas, the General Assembly declares that the individuals the Governor appointed to  
20 the Board of Review are hereby deemed to be the names of the appointees submitted by the  
21 Governor to the General Assembly to fill the terms of membership on the Board of Review;  
22 and

23 Whereas, the General Assembly declares that Jeanette Doran is hereby deemed to be the  
24 appointee representing the general public;

25 Now, therefore,

26  
27 Be it resolved by the Senate, the House of Representatives concurring:

28 **SECTION 1.** The appointment of Jeanette Doran to membership on the Board of  
29 Review as the member representing the general public for a term beginning December 6, 2013,  
30 is confirmed.

31 **SECTION 2.** This resolution is effective upon ratification.





## Bill Draft 2015-RB-3D: Confirm Board of Review/Doran.

2015-2016 General Assembly

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<b>Committee:</b>	Joint Legislative Oversight Committee on Unemployment Insurance	<b>Date:</b>	December 31, 2014
<b>Introduced by:</b>		<b>Prepared by:</b>	Cindy Avrette
<b>Analysis of:</b>	2015-RB-3D		Committee Counsel

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**SUMMARY:** *This resolution would confirm Jeanette Doran to serve as the member of the Board of Review representing the general public.*

**CURRENT LAW:** US Department of Labor (US DOL) encourages states to provide a second level of review for decisions and determinations made by the Division of Employment Security (DES), but it does not require one. In 2011, the General Assembly created a Board of Review\* to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Lower Appeals Department of DES. The Board consists of three members appointed by the Governor and confirmed by the General Assembly: one member representing employers, one member representing employees, and one member representing the general public. The member representing the general public is designated as the chair of the Board and must be a licensed attorney.

**BILL ANALYSIS:** This Joint Resolution would designate Jeanette Doran as the Board of Review member that represents the general public and it would confirm her as the Governor's appointee to serve on the Board of Review. As the member representing the general public, Ms. Doran is a licensed attorney and would serve as the Chair of the Board.

**EFFECTIVE DATE:** The resolution would become effective upon ratification. Under Article II, Sec. 22 of the North Carolina Constitution, joint resolutions and bills that make an appointment to a public office and contain no other matter become law upon being read three times in each house and signed by the presiding officer of both houses.

**BACKGROUND:** The General Assembly created the Board of Review in S.L. 2011-401, to become effective November 1, 2011. However, the 2011 General Assembly failed to set the salaries for the Board members and the Governor did not appoint members to the Board. In S.L. 2012-142, the Current Operations and Capital Improvements Appropriations Act of 2012, the General Assembly set the salaries for the Board members.† Although the budget became law on July 2, 2012, the appointments to the Board had not been made by June of 2013. In recognition that the appointments would not be made prior to the adjournment of the 2013 Session, the

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\* G.S. 96-4(b).

† The chair receives an annual salary of \$122,255 and the remaining two members receive an annual salary of \$120,737.

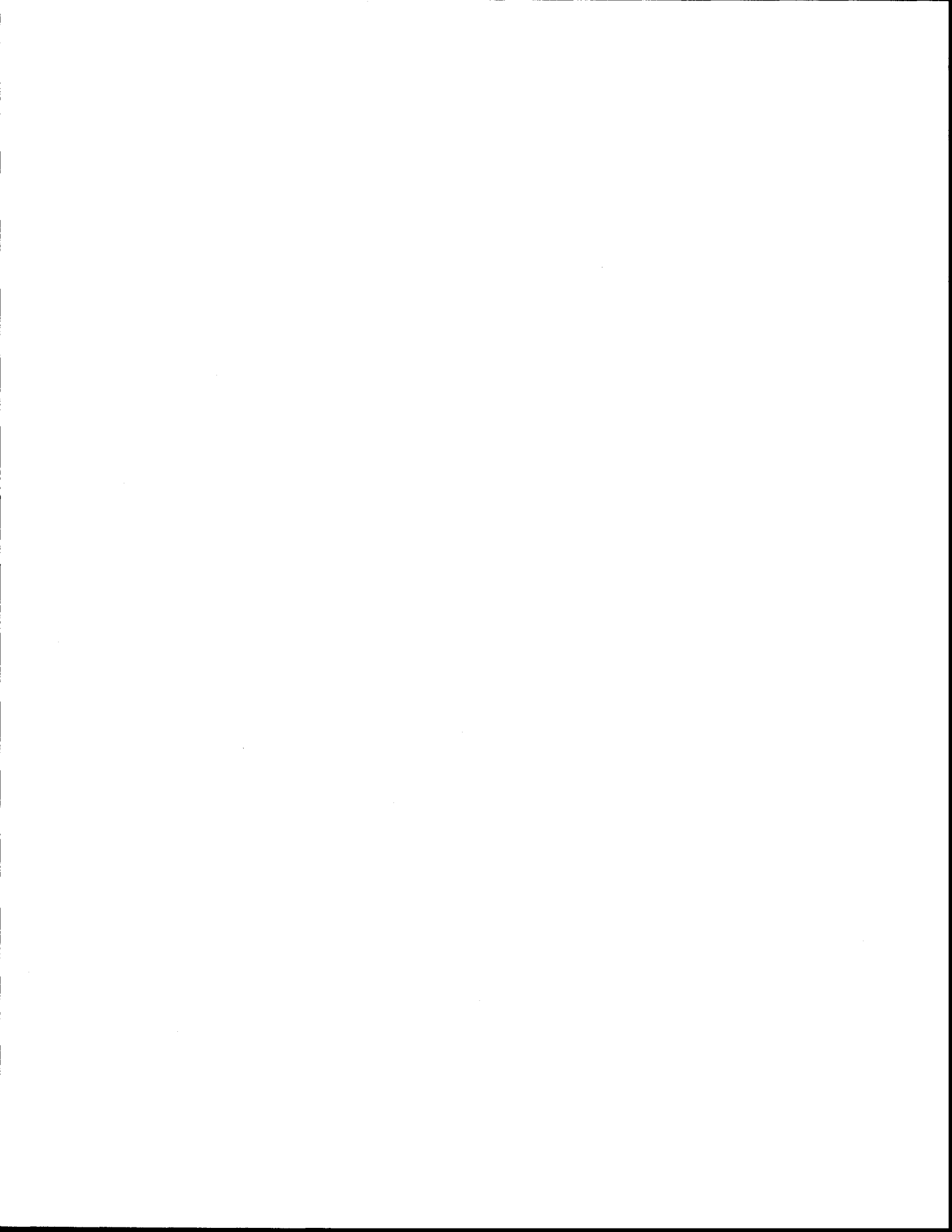
General Assembly enacted a one-time exception to the confirmation process. In Section 21 of S.L. 2013-224, the General Assembly directed the Governor to make the appointments to the Board by September 1, 2013, and provided that the initial appointments made under the authority of this section did not need to be confirmed by the General Assembly. The Governor appointed three individuals on December 6, 2013, to serve on the Board of Review: Stanley Campbell, Jeanette Doran, and Keith Holliday. The Governor did not designate who the individuals appointed represented.

The Joint Legislative Oversight Committee on Unemployment Insurance expressed concern about the proper constitution of the Board during the 2013-14 interim. The Committee found that the Governor did not appoint the members by September 1, 2013, and therefore the individuals appointed did not fall within the one-time exception to the confirmation process provided in S.L. 2013-224. The Committee recommended legislation to the 2014 General Assembly to remove any ambiguity or uncertainty about the proper constitution of the Board. The recommended legislation, contained in the first edition of House Bill 1069 of the 2014 Session, would have amended S.L. 2013-224 to extend the date by which the Governor could make initial appointments without legislative confirmation from September 1, 2013, to January 1, 2014. Under the ratified version of House Bill 1069, Section 21 of S.L. 2013-224 would have been repealed and the named individuals would have been legislatively designated to serve as the Governor's appointments to the Board. House Bill 1069 also included an amendment to G.S. 96-4(b) that would have created staggered three-year terms for the Board members. The Governor vetoed House Bill 1069 citing the following as the reason: "*... there are unacceptable provisions which stagger and shorten terms of current lawfully seated members.*"

The Joint Legislative Oversight Committee on Unemployment Insurance remains concerned about the proper constitution of the Board and the legal implications of that uncertainty.

**LEGISLATIVE PROPOSAL #5:**

**A Joint Resolution Providing for Confirmation of  
Keith Holliday to the Board of Review**



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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BILL DRAFT 2015-RBz-3H [v.4] (11/21)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

1/5/2015 12:31:28 PM

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Sponsors: (Primary Sponsor).

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Referred to:

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1 A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF KEITH HOLLIDAY TO  
2 THE BOARD OF REVIEW, AS RECOMMENDED BY THE JOINT LEGISLATIVE  
3 OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.

4 Whereas, G.S. 96-4(b) directs the Governor to appoint a three-person Board of Review  
5 to determine appeals policies and procedures and to hear appeals arising from the decisions and  
6 determinations of the Division of Employment Security, Department of Commerce; and

7 Whereas, G.S. 96-4(b) provides that members of the Board of Review are subject to  
8 confirmation by the General Assembly; and

9 Whereas, G.S. 96-4(b) provides that one member of the Board of Review represents  
10 employers, one member represents employees, and one member represents the general public;  
11 and

12 Whereas, the Governor announced the following appointments to the Board of Review  
13 on December 6, 2013: Stanley Campbell, Jeanette Doran, and Keith Holliday; and

14 Whereas, the Governor did not submit to the General Assembly the names of any  
15 appointees to fill the terms of membership on the Board of Review; and,

16 Whereas, the Governor did not designate which appointee represented employers,  
17 which appointee represented employees, and which appointee represented the general public;  
18 and

19 Whereas, the General Assembly declares that the individuals the Governor appointed to  
20 the Board of Review are hereby deemed to be the names of the appointees submitted by the  
21 Governor to the General Assembly to fill the terms of membership on the Board of Review;  
22 and

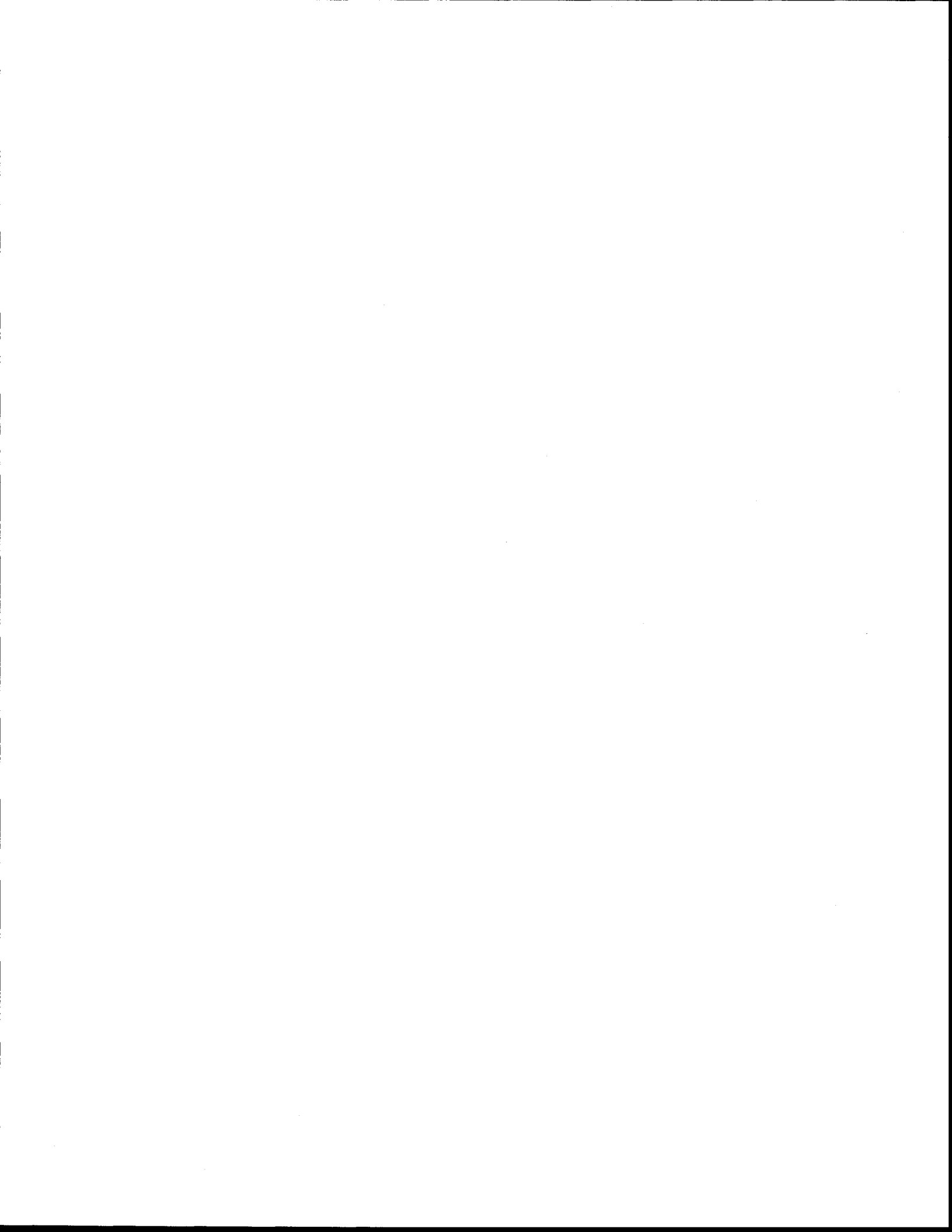
23 Whereas, the General Assembly declares that Keith Holliday is hereby deemed to be the  
24 appointee representing employers;

25 Now, therefore,

26  
27 Be it resolved by the Senate, the House of Representatives concurring:

28 **SECTION 1.** The appointment of Keith Holliday to membership on the Board of  
29 Review as the member representing employers for a term beginning December 6, 2013, is  
30 confirmed.

31 **SECTION 2.** This resolution is effective upon ratification.







## Bill Draft 2015-RB-3H: Confirm Board of Review/Holliday.

2015-2016 General Assembly

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<b>Committee:</b>	Joint Legislative Oversight Committee on Unemployment Insurance	<b>Date:</b>	December 31, 2014
<b>Introduced by:</b>		<b>Prepared by:</b>	Cindy Avrette
<b>Analysis of:</b>	2015-RB-3H		Committee Counsel

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**SUMMARY:** *This resolution would confirm Keith Holliday to serve as the member of the Board of Review representing employers.*

**CURRENT LAW:** US Department of Labor (US DOL) encourages states to provide a second level of review for decisions and determinations made by the Division of Employment Security (DES), but it does not require one. In 2011, the General Assembly created a Board of Review\* to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Lower Appeals Department of DES. The Board consists of three members appointed by the Governor and confirmed by the General Assembly: one member representing employers, one member representing employees, and one member representing the general public. The member representing the general public is designated as the chair of the Board and must be a licensed attorney.

**BILL ANALYSIS:** This Joint Resolution would designate Keith Holliday as the Board of Review member that represents employers and it would confirm him as the Governor's appointee to serve on the Board of Review.

**EFFECTIVE DATE:** The resolution would become effective upon ratification. Under Article II, Sec. 22 of the North Carolina Constitution, joint resolutions and bills that make an appointment to a public office and contain no other matter become law upon being read three times in each house and signed by the presiding officer of both houses.

**BACKGROUND:** The General Assembly created the Board of Review in S.L. 2011-401, to become effective November 1, 2011. However, the 2011 General Assembly failed to set the salaries for the Board members and the Governor did not appoint members to the Board. In S.L. 2012-142, the Current Operations and Capital Improvements Appropriations Act of 2012, the General Assembly set the salaries for the Board members.† Although the budget became law on July 2, 2012, the appointments to the Board had not been made by June of 2013. In recognition that the appointments would not be made prior to the adjournment of the 2013 Session, the General Assembly enacted a one-time exception to the confirmation process. In Section 21 of

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\* G.S. 96-4(b).

† The chair receives an annual salary of \$122,255 and the remaining two members receive an annual salary of \$120,737.

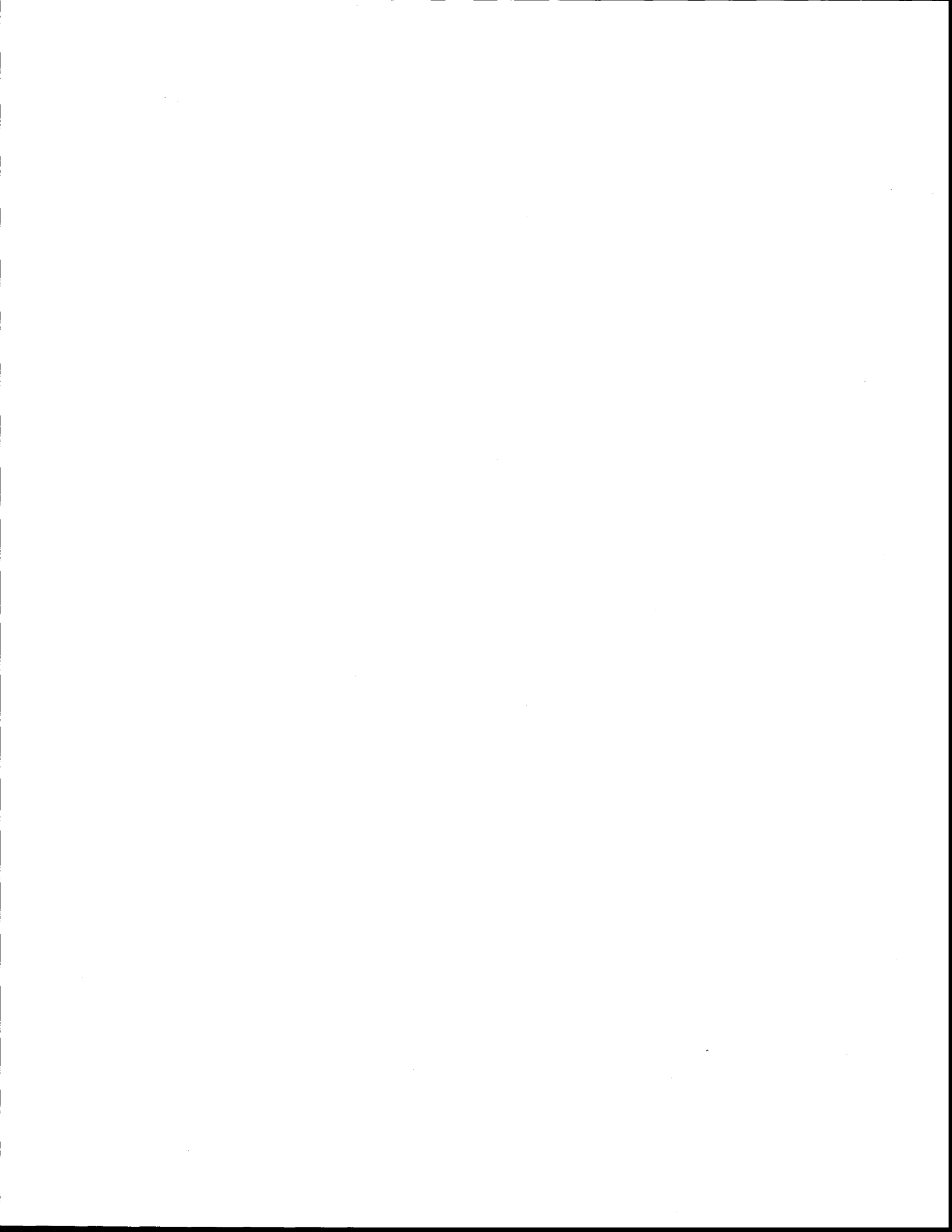
S.L. 2013-224, the General Assembly directed the Governor to make the appointments to the Board by September 1, 2013, and provided that the initial appointments made under the authority of this section did not need to be confirmed by the General Assembly. The Governor appointed three individuals on December 6, 2013, to serve on the Board of Review: Stanley Campbell, Jeanette Doran, and Keith Holliday. The Governor did not designate who the individuals appointed represented.

The Joint Legislative Oversight Committee on Unemployment Insurance expressed concern about the proper constitution of the Board during the 2013-14 interim. The Committee found that the Governor did not appoint the members by September 1, 2013, and therefore the individuals appointed did not fall within the one-time exception to the confirmation process provided in S.L. 2013-224. The Committee recommended legislation to the 2014 General Assembly to remove any ambiguity or uncertainty about the proper constitution of the Board. The recommended legislation, contained in the first edition of House Bill 1069 of the 2014 Session, would have amended S.L. 2013-224 to extend the date by which the Governor could make initial appointments without legislative confirmation from September 1, 2013, to January 1, 2014. Under the ratified version of House Bill 1069, Section 21 of S.L. 2013-224 would have been repealed and the named individuals would have been legislatively designated to serve as the Governor's appointments to the Board. House Bill 1069 also included an amendment to G.S. 96-4(b) that would have created staggered three-year terms for the Board members. The Governor vetoed House Bill 1069 citing the following as the reason: "... *there are unacceptable provisions which stagger and shorten terms of current lawfully seated members.*"

The Joint Legislative Oversight Committee on Unemployment Insurance remains concerned about the proper constitution of the Board and the legal implications of that uncertainty.

**LEGISLATIVE PROPOSAL #6:**

**DES Board of Review**



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

U

D

BILL DRAFT 2015-RBz-2A [v.5] (11/21)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

1/5/2015 12:33:06 PM

Short Title: DES Board of Review.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO RATIFY PAST UNEMPLOYMENT INSURANCE APPEALS DECISIONS, TO AMEND THE APPOINTMENT PROCESS FOR THE BOARD, AND TO CREATE STAGGERED TERMS FOR MEMBERS OF THE BOARD OF REVIEW, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.

The General Assembly of North Carolina enacts:

**PART I. RATIFY APPEALS DECISIONS**

**SECTION 1.(a)** The following decisions in an appeal by a party to a decision of an appeals referee or hearing officer under Chapter 96 of the General Statutes are hereby validated and given the same legal effect as if those decisions had been issued by the Board of Review:

- (1) Decisions issued by the Assistant Secretary of Commerce for the Division of Employment Security or by the Secretary of Commerce's designee.
- (2) Decisions issued by the three individuals appointed by the Governor in December 2013 to serve as members of the Board of Review.

**SECTION 1.(b)** This section is effective when it becomes law and applies to decisions rendered on or after November 1, 2011, and before the effective date of Senate Joint Resolution \_\_\_\_.

**PART II. EXPOUND UPON THE APPOINTMENT PROCESS FOR THE BOARD OF REVIEW**

**SECTION 2.(a)** G.S. 96-4(b) and Section 21 of S.L. 2013-224 are repealed.

**SECTION 2.(b)** Article 2D of Chapter 96 of the General Statutes is amended by adding a new section to read:

"§ 96-15.3. Board of Review.

(a) Purpose. – The Board of Review is created to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Division. The Department of Commerce must assign staff to the Board of Review. The Board of Review and its staff must perform their job responsibilities independent of the Governor, the General Assembly, the Department, and the Division and in accordance with any written guidance promulgated and issued by the U.S. Department of Labor.

(b) Members. – The Board of Review consists of three members appointed by the Governor and subject to confirmation by the General Assembly as provided in subsection (c) of this section. One member must be classified as representative of employees, one member must

1 be classified as representative of employers, and one member must be classified as  
2 representative of the general public. The member appointed to represent the general public will  
3 serve as chair of the Board of Review and must be a licensed attorney in this State.

4 Members of the Board of Review serve staggered four-year terms. A term begins on July 1  
5 of the year of appointment and ends on June 30 of the fourth year. No individual may serve  
6 more than two terms on the Board of Review. In calculating the number of terms served, a  
7 partial term that is less than 24 months in length will not be included. The General Assembly  
8 must set the annual salaries of the Board of Review in the current Operations Appropriations  
9 Act.

10 (c) Confirmation. – Appointments of members to serve on the Board of Review are  
11 subject to confirmation by the General Assembly by joint resolution. The Governor must  
12 submit the name of the individual nominated by the Governor to be appointed to the Board of  
13 Review to the General Assembly for confirmation on or before May 1 of the year of the  
14 expiration of the term. If the General Assembly does not confirm the appointment by May 30,  
15 the office will be considered vacant and must be filled in accordance with subsection (d) of this  
16 section. The Governor may not resubmit the name of the nominee whom the General Assembly  
17 did not confirm for the office. If the Governor fails to timely submit a nomination, the General  
18 Assembly will appoint to fill the succeeding term as provided in subsection (e) of this section.

19 (d) Vacancies. – For the purpose of this subsection, the General Assembly is not in  
20 session only (i) prior to convening of the Regular Session, (ii) during any adjournment of the  
21 Regular Session for more than 10 days, and (iii) after sine die adjournment of the Regular  
22 Session. A vacancy in an office of the Board of Review prior to the expiration of the term of  
23 office must be filled in accordance with this subsection:

24 (1) During legislative session. – If a vacancy in an office arises or exists when  
25 the General Assembly is in session, the Governor must submit the name of  
26 the individual to be appointed to fill the vacancy for the remainder of the  
27 unexpired term within 30 days after the vacancy arises to the General  
28 Assembly for confirmation by the General Assembly. If the General  
29 Assembly does not confirm the appointment within 30 days after the General  
30 Assembly receives the nomination, the office will be considered vacant and  
31 must be filled in accordance with this subsection. The Governor may not  
32 resubmit the name of the nominee whom the General Assembly did not  
33 confirm for the vacancy. If the Governor fails to timely submit a nomination,  
34 the General Assembly will appoint to fill the vacancy as provided in  
35 subsection (e) of this section.

36 (2) Not during legislative session. – If a vacancy in an office arises or exists  
37 when the General Assembly is not in session, the Governor must appoint an  
38 individual to that office to serve on an interim basis pending confirmation by  
39 the General Assembly. The Governor **must** submit the name of the  
40 individual to be appointed to fill the vacancy for the remainder of the  
41 unexpired term to the General Assembly for confirmation within 14 days of  
42 the date the General Assembly convenes or reconvenes the next Regular  
43 Session. If the Governor fails to timely submit a nomination, the General  
44 Assembly will appoint to fill the vacancy as provided in subsection (e) of  
45 this section.

46 (e) Legislative Appointments. – If the Governor fails to timely submit the name of an  
47 individual to be appointed to the Board of Review as provided in this section, then the General  
48 Assembly may appoint an individual to fill the vacancy in accordance with G.S. 120-121 and  
49 the provisions of this subsection. If the vacancy occurs in an odd-numbered year, the  
50 appointment is made upon the recommendation of the President Pro Tempore of the Senate. If

1 the vacancy occurs in an even-numbered year, the appointment is made upon the  
2 recommendation of the Speaker of the House of Representatives."  
3

4 **PART III. CREATE STAGGERED TERMS FOR THE BOARD OF REVIEW**

5 **SECTION 3.** To achieve the staggered terms for the members of the Board of  
6 Review in accordance with G.S. 96-15.3, as enacted by this act, and notwithstanding the  
7 appointment provisions in G.S. 96-4(b), as repealed by this act, and in G.S. 96-15.3, as enacted  
8 by this act:

- 9 (1) The term of the member serving on the Board of Review that represents  
10 employers expires June 30, 2015.  
11 (2) The term of the member serving on the Board of Review that represents  
12 employees expires June 30, 2016.  
13 (3) The term of the member serving on the Board of Review that represents the  
14 general public expires June 30, 2017.  
15

16 **PART IV. ENSURE INDEPENDENCE OF BOARD OF REVIEW AND ITS STAFF**

17 **SECTION 4.** By May 1, 2015, the Secretary of Commerce and the Chair of the  
18 Board of Review (BOR) shall jointly make a detailed written report to the Chairs of the Joint  
19 Legislative Oversight Committee on Unemployment Insurance, the Chairs of the Senate  
20 Appropriations Committee on Natural and Economic Resources, the Chairs of the House of  
21 Representatives Appropriations Subcommittee on Natural and Economic Resources and the  
22 Fiscal Research Division on all of the following:

- 23 (1) Measures taken to ensure the independence of BOR staff regarding higher  
24 level appeals in accordance with State law and federal guidelines.  
25 (2) The number, types, and classifications of positions (including coverage  
26 under the State Human Resources Act) assigned to the staff the BOR.  
27 (3) For each BOR staff member, the percentage of duties that involve work only  
28 for the BOR and the nature of duties performed by BOR staff only for the  
29 BOR.  
30 (4) For each BOR staff member, the percentage of duties that do not involve the  
31 work of the BOR and the nature of duties performed by BOR staff that do  
32 not involve work for the Board of Review.  
33 (5) Whether or not adequate staff is assigned to the BOR. And, if not, what  
34 additional resources are required to achieve adequate staffing.  
35

36 **PART V. EFFECTIVE DATE**

37 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes  
38 law.







## Bill Draft 2015-RB-2A: DES Board of Review.

2015-2016 General Assembly

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<b>Committee:</b>	Joint Legislative Oversight Committee on Unemployment Insurance	<b>Date:</b>	December 31, 2014
<b>Introduced by:</b>		<b>Prepared by:</b>	Cindy Avrette Committee Counsel
<b>Analysis of:</b>	2015-RB-2A		

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**SUMMARY:** *This legislative proposal would provide more clarity to the appointment process for the Board of Review, create staggered terms for the members of the Board of Review, and ratify past unemployment appeals decisions.*

**CURRENT LAW:** US Department of Labor (US DOL) encourages states to have a second level of review for decisions and determinations made by the Division of Employment Security (DES), but it does not require one. In S.L. 2011-401, the General Assembly created a Board of Review\* to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Lower Appeals Department of DES. The Board consists of three members† appointed by the Governor and confirmed by the General Assembly: one member representing employers, one member representing employees, and one member representing the general public.‡ The member representing the general public is designated as the chair of the Board and must be a licensed attorney. The members serve four-year terms. The statute provides little guidance as to the appointment and confirmation process.

Beginning November 1, 2011, G.S. 96-4 provided a second level of appeal to an impartial Board of Review. However, the Board was not appointed until December 6, 2013. In the absence of a Board, the Assistant Secretary of Commerce for DES, or the Secretary of Commerce's designee, provided parties with the second level of review that the statute vested in the Board of Review. In a case before the Superior Court in Rowan County, the Court noted that the Assistant Secretary of Commerce for DES did not have the statutory authority to make those decisions. According to the testimony in the case,§ there may have been 13,000 lower level decisions appealed to the second level of review prior to the Governor's appointment of the Board of Review. A party who does not agree with a DES decision or determination may seek redress in the Superior Court. The failure to provide a second level of review in the form required by the

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\* S.L. 2011-401.

† G.S.96-4(b).

‡ The Governor made the following appointments to the Board of Review: Keith Holliday, representing employers; Stanley Campbell, representing employees; and Jeanette Doran, representing the general public.

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

statute (i.e., by a properly constituted Board of Review) does not harm a party who disagrees with a decision because the party has the ability to appeal to Superior Court.

**BILL ANALYSIS:** Part I of the bill addresses the validation of higher-level appeal decisions made since November 1, 2011. It validates the second level appeals decisions made since November 1, 2011, in two ways:

- Provides decisions made by the Assistant Secretary of Commerce for DES or the Secretary of Commerce's designee are validated and given the same legal effect as if the decision had been issued by the Board of Review.
- Provides that decisions made by the three individuals appointed by the Governor in December 2013 to serve on the Board of Review are validated and given the same legal effect as if the decision had been issued by the Board of Review. The individuals serving as members of the Board were appointed by the Governor on December 6, 2013; those appointments have not been confirmed by the General Assembly.

Part II of the bill provides greater clarity and definition to the appointment and confirmation process. The specificity provided for the Board of Review appointment and confirmation process is similar to the current process for the appointment and confirmation of members serving on the Industrial Commission. Section 2 of the bill provides the following:

- The purpose of the Board of Review is to determine appeals policies and procedures and to hear appeals arising from the decision and determinations of DES. The Board and its staff must perform their job responsibilities independent of the Governor, the General Assembly, the Department of Commerce, and DES. It must perform its responsibilities in accordance with any written guidance promulgated and issued by US DOL.
- The terms for Board of Review members begin on July 1 and end on June 30 of the fourth year.
- The members serve staggered terms.
- The Governor must submit the name of an individual to the General Assembly for confirmation on or before May 1 of the year of the expiration of the term. If the General Assembly does not confirm the nomination by May 30, the office is considered vacant and the Governor must submit the name of another individual to the General Assembly for confirmation within 30 days. If the Governor fails to timely submit a nomination, then the General Assembly may fill the office.
- When a vacancy occurs in an office of the Board of Review, the Governor has 30 days to submit the name of an individual to the General Assembly for confirmation to serve on the Board of Review. If the General Assembly fails to confirm the individual within 30 days of the submission, the office is considered vacant and the Governor must submit the name of another individual to the General Assembly for

confirmation. If the Governor fails to timely submit a nomination, then the General Assembly may fill the office.

- If a vacancy exists when the General Assembly is not in session, the Governor may appoint an individual to serve on the Board of Review on an interim basis. The Governor must submit the name of the person serving on an interim basis to the General Assembly for confirmation within 14 days of the date the General Assembly convenes or reconvenes a Regular Session.

Part III of the bill gives effect to the staggered terms created under Part II of the bill. It specifies that the term of the member serving on the current Board of Review that represents employers expires June 30, 2015; the term of the member that represents employees expires June 30, 2016; and the term of the member that represents the general public expires June 30, 2017.

Part IV of the bill seeks to ensure that the Board of Review has sufficient resources to perform its job responsibilities. To enable the General Assembly to make informed budgetary decisions, Section 4 requires the Secretary of Commerce and the chair of the Board of Review to provide a report by May 1, 2015, on all of the following\*\* :

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

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

**EFFECTIVE DATE:** Part I of this bill would become effective when it becomes law and applies to decisions rendered on or after November 1, 2011. The remainder of the bill would become effective when it becomes law.

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



**LEGISLATIVE PROPOSAL #7:**

**UI/BOR Attorney Transfers and Funding  
( Special Provision)**



GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

DRAFT  
SPECIAL PROVISION



2015-COMM-H1

Department of Commerce  
Appropriations Subcommittee on Natural and Economic Resources

Special Provision 2015-COMM-H1

Requested by: Representative

**UI/BOR ATTORNEY TRANSFERS AND FUNDING**

**SECTION #.(a)** In order to ensure that the Board of Review (BOR), Department of Commerce, handles higher level appeals independently and with sufficient legal staff in accordance with guidelines promulgated and issued by the U.S. Department of Labor:

- (1) Four Attorney positions and one Paralegal position having the following position numbers are transferred from the Division of Employment Services (DES) Legal Department to the BOR: (i) 65007801, (ii) 60077282, (iii) 60077284, (iv) 60077283, and (v) 60077291, the Paralegal position.
- (2) These transferred legal positions:
  - a. Shall report directly to the Chair of the BOR and shall act independently without influence from the Governor or the General Assembly.
  - b. Shall be subject to the State Human Resources Act in the same manner as a career State employee under that Act.

**SECTION #.(b)**. Of the funds appropriated to the Department of Commerce, Division of Employment Services (DES), for the administration of the Unemployment Insurance program as required by federal law and guidelines, the sum of four hundred eighty six thousand forty three dollars (\$486,043) for the 2015-2016 fiscal year shall be used to pay the legal staff costs of the Board of Review.







## SPECIAL PROVISION 2015-COMM-H1:

2015-2016 General Assembly

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<b>Committee:</b>	Joint Legislative Oversight Committee on Unemployment Insurance	<b>Date:</b>	December 31, 2014
<b>Introduced by:</b>		<b>Prepared by:</b>	Cindy Avrette
<b>Analysis of:</b>	2015-COMM-H1		Committee Counsel

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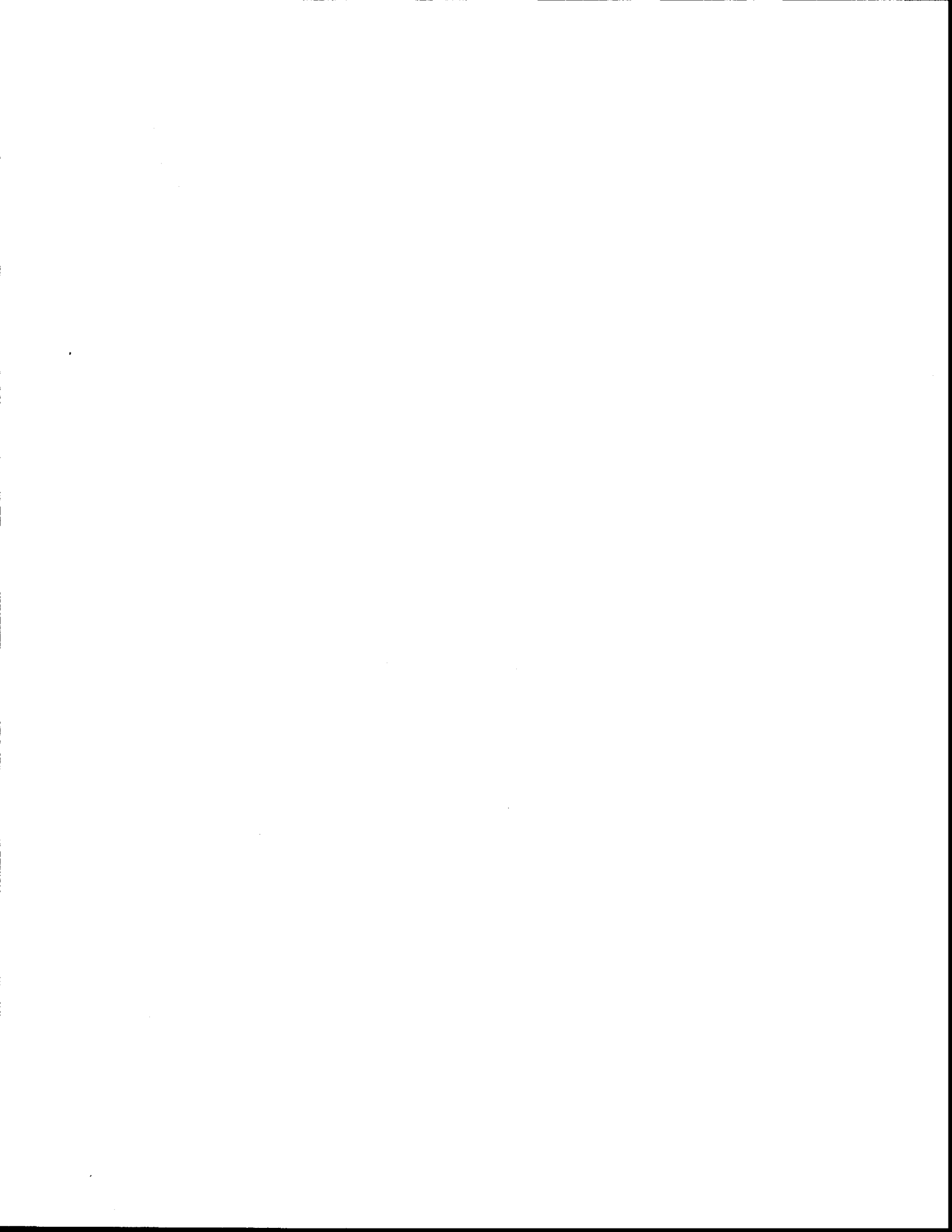
**SUMMARY:** *This special provision would transfer four attorney positions and one paralegal position from the Division of Employment Security (DES), Department of Commerce, to the Board of Review. Of the funds appropriated to the Department of Commerce, it would allocate \$486,043 to be used to pay the legal staff costs of the Board.*

**CURRENT LAW:** The Board of Review hears appeals arising from the decisions and determinations of the Lower Appeals Department of DES. Under written guidance promulgated and issued by the U.S. Department of Labor (US DOL), the Board is to exercise its duties independent of the Governor, the General Assembly, the Department of Commerce, and DES.

**BILL ANALYSIS:** This special provision seeks to ensure that the Board of Review has adequate legal staff to fulfill its statutory responsibilities independently of DES. The positions slated for transfer in the special provision were determined based responses provided by DES to questions posed by Committee fiscal staff in conjunction with Beacon data. The Committee intends to recommend this special provision to Chairs of the House and Senate Natural and Economic Resources (NER) Appropriation Committees for incorporation into the 2015 Appropriations Act. The Committee recommended a legislative proposal to the 2015 General Assembly that included a joint report from the Secretary of Commerce and the Chair of the Board of Review to the Joint Legislative Oversight Committee on Unemployment Insurance, NER Appropriations Committees, and Fiscal Research Division regarding the appropriate staffing needs of the Board. The report would be due on or before May 1, 2015, to help the NER Appropriations Committees determine and fund adequate staffing for the Board of Review.

Funds to administer DES and the Board of Review come from grants allocated to this State from US DOL. The source of the federal funds is the revenue from the federal unemployment tax paid by employers. All federal grant monies must be appropriated by the General Assembly.

**EFFECTIVE DATE:** July 1, 2015



**APPENDIX A:**

**Authorizing Legislation**

*Article 12R of Chapter 120 of the North  
Carolina General Statutes*



Article 12R.

Joint Legislative Oversight Committee on Unemployment Insurance.

**§ 120-70.155. (Expires July 1, 2023) Creation and membership.**

(a) The Joint Legislative Oversight Committee on Unemployment Insurance is established. The Committee consists of eight members appointed as follows:

- (1) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (2) Four members of the Senate appointed by the President Pro Tempore of the Senate.

(b) The members serve for a term of two years. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until a successor is appointed. A vacancy shall be filled by the officer who made the original appointment. (2013-2, s. 10; 2013-224, s. 19.)

**§ 120-70.156. (Expires July 1, 2023) Purpose and powers of Committee.**

(a) Purpose. - The Joint Legislative Oversight Committee on Unemployment Insurance is directed to study and review all unemployment insurance matters, workforce development programs, and reemployment assistance efforts of the State. The following duties and powers, which are enumerated by way of illustration, shall be liberally construed to provide maximum review by the Committee of these matters:

- (1) Study the unemployment insurance laws of North Carolina and the administration of those laws.
- (2) 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.
- (3) Monitor the payment of the debt owed by the Unemployment Trust Fund to the federal government.
- (4) Review and determine the adequacy of the balances in the Unemployment Trust Fund and the Unemployment Insurance Reserve Fund.
- (5) Study the workforce development programs and reemployment assistance efforts of the Division of Workforce Solutions of the Department of Commerce.
- (6) Call upon the Department of Commerce to cooperate with it in the study of the unemployment insurance laws and the workforce development efforts of the State.

(b) The Committee may report its findings and recommendations to any regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (2013-2, s. 10; 2013-224, s. 19.)

**§ 120-70.157. (Expires July 1, 2023) Organization of Committee.**

The Speaker of the House of Representatives shall designate one representative as cochair, and the President Pro Tempore of the Senate shall designate one senator as

cochair. The Joint Legislative Oversight Committee on Unemployment Insurance may meet upon the joint call of the cochair. A quorum of the Committee is five members.

The Committee may meet in the Legislative Building or the Legislative Office Building. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate. (2013-2, s. 10; 2013-224, s. 19.)

**§ 120-70.158. (Expires July 1, 2023) Sunset.**

This Article expires July 1, 2023. (2013-2, s. 10; 2013-224, s. 19.)

## **APPENDIX B:**

### **Agendas for the Joint Legislative Oversight Committee on Unemployment Insurance**

**ALL MATERIALS DISTRIBUTED AT MEETINGS MAY  
BE VIEWED ON THE COMMITTEE'S WEBSITE:**

**[http://www.ncleg.net/gascripts/Committees/Committees.as  
p?sAction=ViewCommittee&sActionDetails=Non-  
Standing\\_6596](http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-<br/>Standing_6596)**





**AGENDA**  
**JOINT LEGISLATIVE OVERSIGHT COMMITTEE**  
**ON UNEMPLOYMENT INSURANCE**

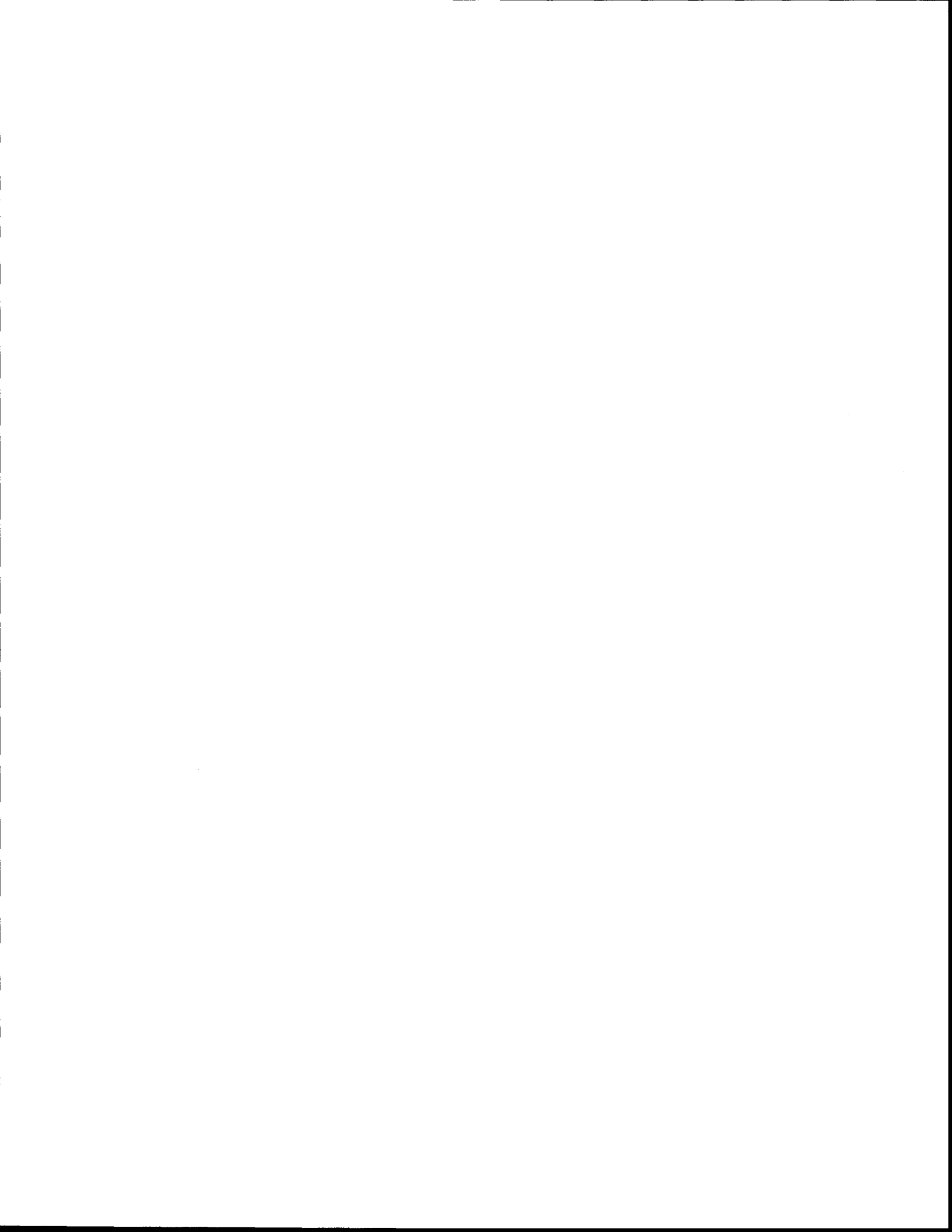
*Rep. Julia Howard*

*Sen. Bob Rucho*

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*Wednesday, September 10, 2014*  
*Room 544, Legislative Office Building*  
*10:00 a.m.*

- I. **Call to Order**
- II. **Approval of Minutes from May 9, 2014, meeting**
- III. **Division of Employment Security (DES)**  
*Assistant Secretary Folwell, DES, Department of Commerce*
  - **Status of UI Trust Fund Debt Balance**
  - **Status of BCR Waiver Application**
  - **Status of DES and the Rule-Making Process**
- IV. **Outcome of Committee Recommendations to the 2014 General Assembly**  
*Cindy Avrette, Research Division*
- V. **Update on *Wilson v. Division of Employment Security***  
*Jan Paul, Research Division*
- VI. **Adjournment**



**AGENDA**  
**JOINT LEGISLATIVE OVERSIGHT COMMITTEE**  
**ON UNEMPLOYMENT INSURANCE**

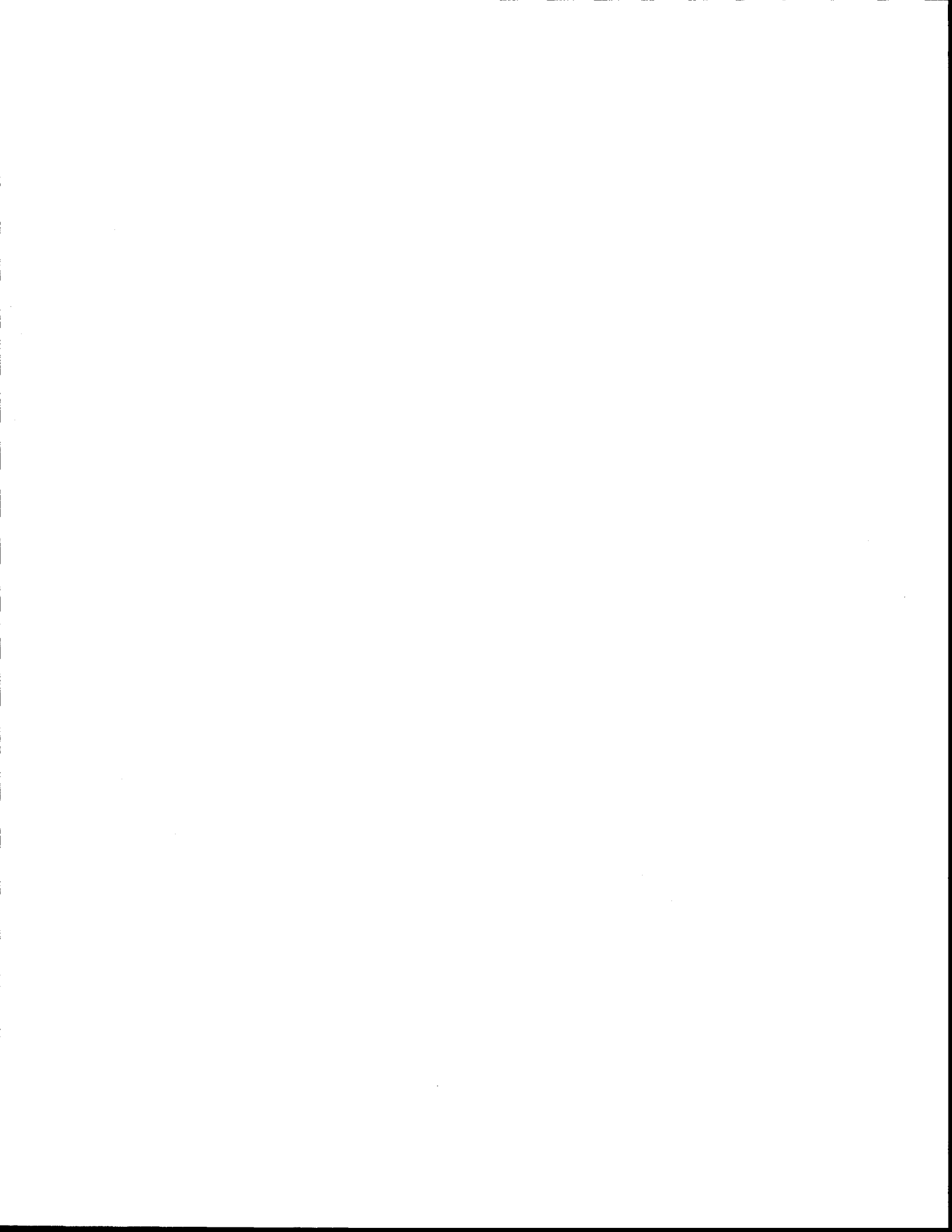
*Rep. Julia Howard*

*Sen. Bob Rucho*

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Wednesday, October 8, 2014  
Room 544, Legislative Office Building  
2:00 p.m.

- I. **Call to Order**
- II. **Approval of Minutes from September 10, 2014, meeting**
- III. **Division of Employment Security (DES)**  
*Assistant Secretary Folwell, DES, Department of Commerce*
  - **Status of UI Trust Fund Debt Balance**
  - **Status of DES and the Rule-Making Process**
  - **Status of State Advisory Council, G.S. 96-4(g)**
- IV. **Overview of Rulemaking Process**  
*Jan Paul, Research Division, NCGA*  
*Molly Masich, OAH*
- V. **Status of Program Integrity Efforts (Update from November 6, 2013, Meeting)**
  - **Employee Misclassification**  
*DES*
  - **Benefits Integrity**  
*DES*
- VI. **Variable Duration Formula**  
*Rodney Bizzell, Fiscal Research Division, NCGA*
- VII. **Adjournment**



**AGENDA**  
**JOINT LEGISLATIVE OVERSIGHT COMMITTEE**  
**ON UNEMPLOYMENT INSURANCE**

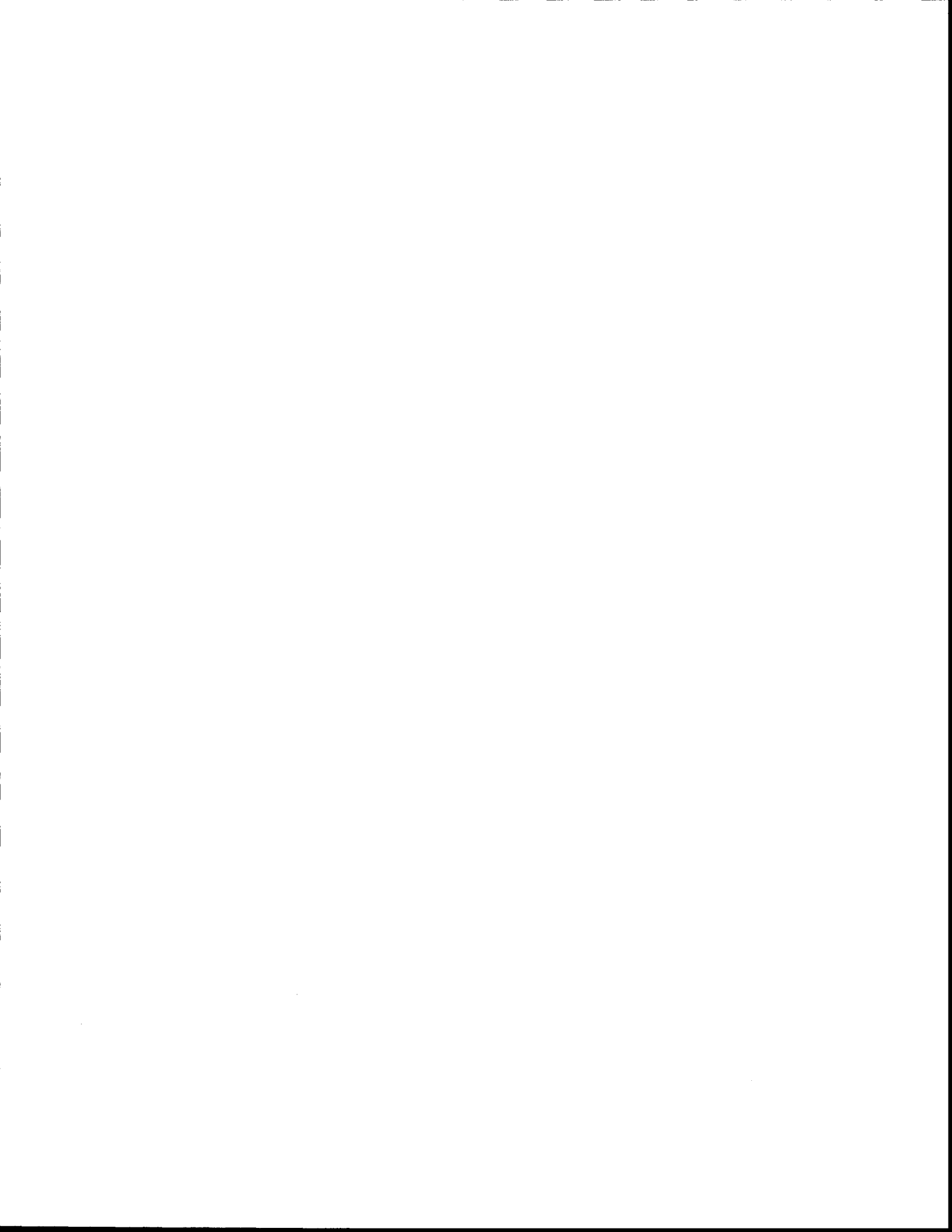
*Rep. Julia Howard*

*Sen. Bob Rucho*

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**Wednesday, November 12, 2014**  
**Room 544, Legislative Office Building**  
**10:00 a.m.**

- I. **Call to Order**
- II. **Approval of Minutes from October 8, 2014, meeting**
- III. **Variable Duration Formula**  
*Rodney Bizzell, Fiscal Research Division, NCGA*
- IV. **Status Update re: Rule-Making**  
*Jeremy Ray, Division of Employment Security, Department of Commerce*  
*Kevin Carlson, Division of Employment Security, Department of Commerce*
- V. **Status Update re: Program Integrity Efforts**  
*John Corellus, GDAC*  
*Ted Brinn, Division of Employment Security, Department of Commerce*
- VI. **Changes from House Bill 1069, Recommended by the Committee in 2014**  
*Greg Roney, Research Division, NCGA*
  - **Authorize DMV to Disclose SSI**
  - **Move Date for Calculating Tax Rates**
  - **Modify Work Search Requirement**
  - **Eliminate Reconsideration of DES Decisions**
  - **Enhance Collection Tools**
  - **Photo Identification Requirement**
- VII. **Adjournment**



**AGENDA**  
**JOINT LEGISLATIVE OVERSIGHT COMMITTEE**  
**ON UNEMPLOYMENT INSURANCE**

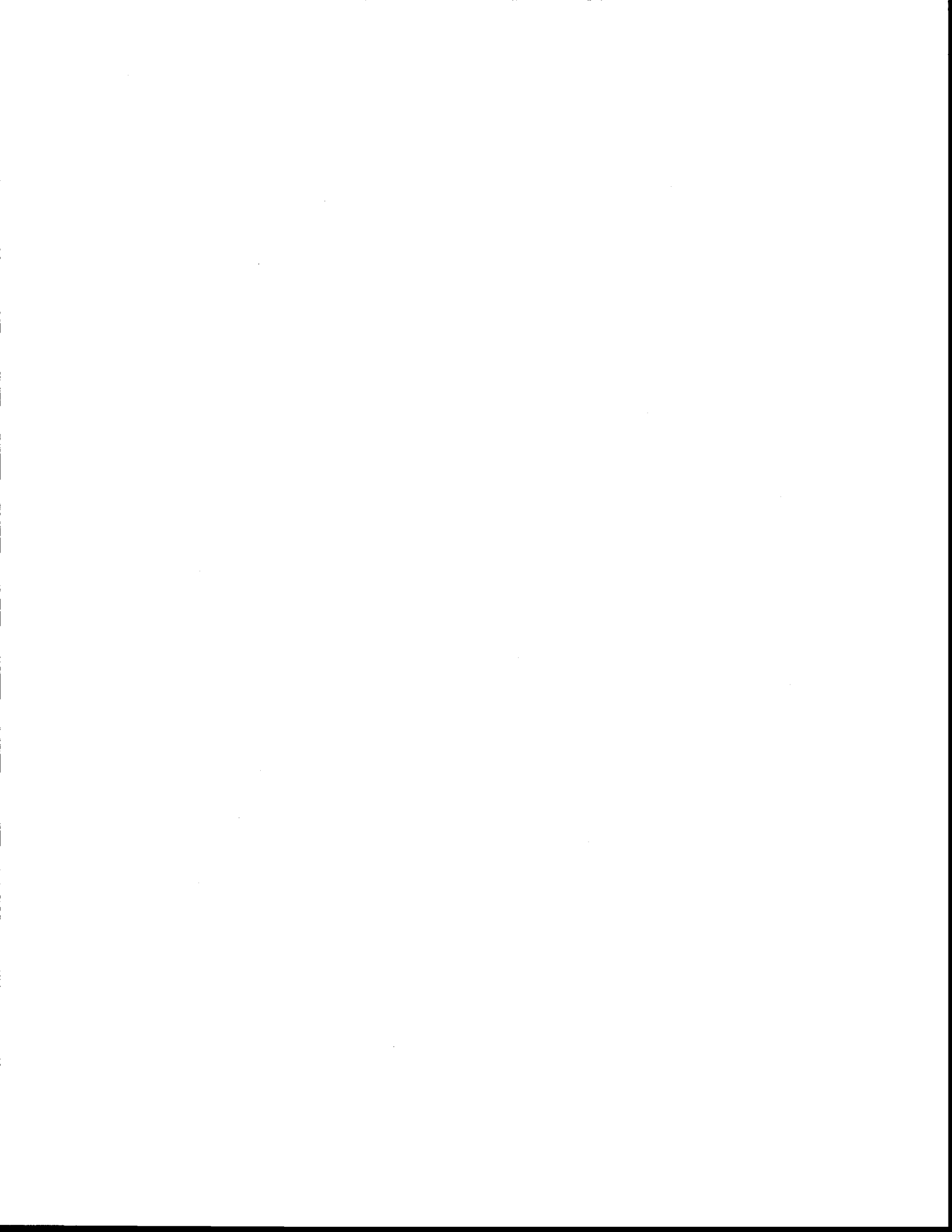
*Rep. Julia Howard*

*Sen. Bob Rucho*

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**Wednesday, December 3, 2014**  
**Room 643, Legislative Office Building**  
**2:00 p.m.**

- I. **Call to Order**
- II. **Approval of Minutes from November 12, 2014, meeting**
- III. **Program Integrity: Questions from November 12, 2014, meeting**  
*Ted Brinn, Division of Employment Security, Department of Commerce*
  - **Quantify Fraudulent Activity by Amount and Percentages**
  - **Specific Fraudulent Activities**
    1. *Misclassification*
    2. *SUTA Dumping*
    3. *Fictitious Employers*
- IV. **Program Integrity: Prescreening**  
*Greg Roney, Research Division, NCGA*  
*Ted Brinn, Division of Employment Security, Department of Commerce*
  - **Prescreening Claims**
    1. *Crosscheck of initial claim*
    2. *Notices to employer and claimant (list of common issues)*
    3. *Crosscheck of weekly certification (internal data and external data (DHHS, GDAC))*
    4. *Employability Assessment Interview*
  - **Prescreen Employers**
- V. **Bill Drafts Related to the Appointment, Confirmation, and Staffing of the Board of Review**  
*Cindy Avrette, Research Division, NCGA*
- VI. **Instructions for Final Report**
  - **Bill Draft: Unemployment Law Changes, Revised**
    - **Extend Deadline for Adoption of Rules**
    - **Variable Duration Formula**
  - **Recommend the Making of Appointments to the State Advisory Council**
  - **Other Recommendations**
- VII. **Adjournment**



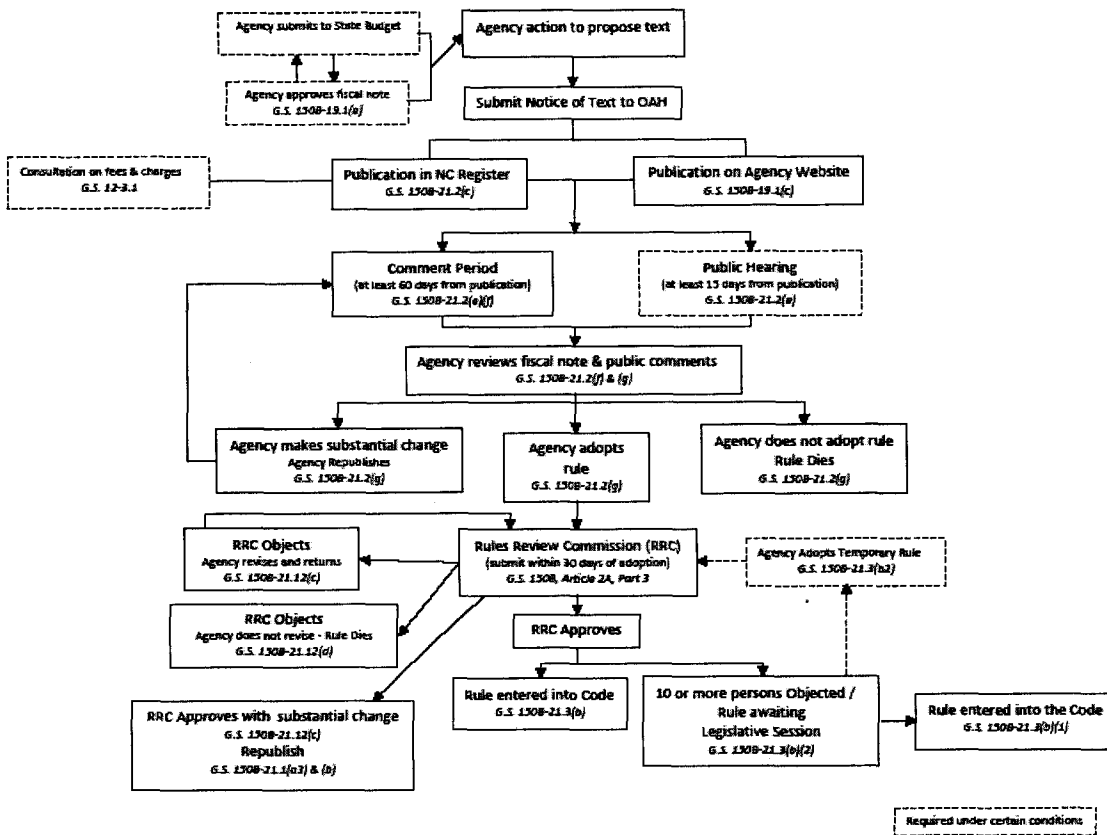


## **APPENDIX C:**

# **Flow Chart for Submission and Adoption of Rules**

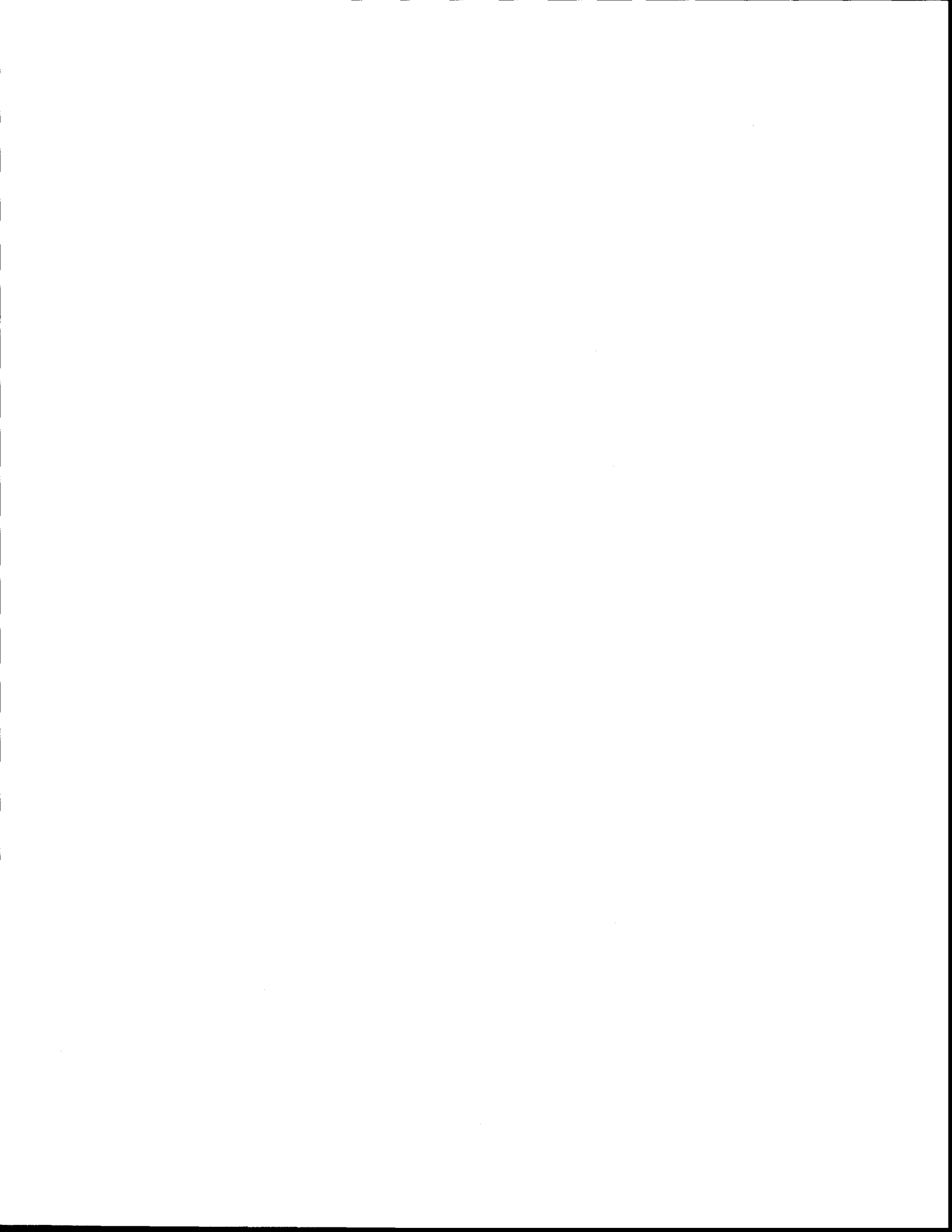


**PERMANENT RULEMAKING PROCESS**



This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

(10/03/14)



**APPENDIX D:**

**Letter from Governor McCrory to the Joint  
Legislative Oversight Committee on  
Unemployment Insurance**





STATE OF NORTH CAROLINA  
OFFICE OF THE GOVERNOR

PAT MCCRUBHY  
GOVERNOR

December 12, 2014

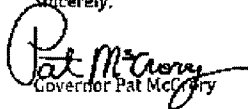
Dear Members of the Joint Legislative Oversight Committee on Unemployment Insurance,

I am writing to express my administration's strong objections to the renewed efforts to change members and reporting relationships of legal staff to the Board of Review.

This continued legislative politicization and legislative overreach of another commission goes against the Executive Branch's responsibility to execute our laws and manage the day-to-day operations of state government and represents yet another attempt by some in the Legislature to create an unaccountable entity which performs core executive branch functions within the Executive Branch.

This additional bureaucratic step is already costing employers throughout our state almost \$1 million a year, and to use the Board of Review as a political football will further hamper the incredible progress that our administration has made in improving the cost efficiency of the North Carolina Division of Employment Security.

Sincerely,

  
Governor Pat McCrubby

