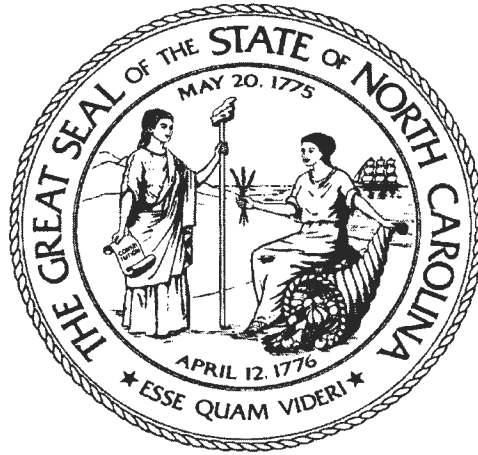


NORTH CAROLINA GENERAL ASSEMBLY



JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE

REPORT TO THE 2017 SESSION of the 2017 GENERAL ASSEMBLY OF NORTH CAROLINA

DECEMBER 14, 2016

A LIMITED NUMBER OF COPIES OF THIS REPORT ARE AVAILABLE FOR
DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27603-5925
TELEPHONE: (919) 733-9390

TABLE OF CONTENTS

LETTER OF TRANSMITTAL	5
COMMITTEE PROCEEDINGS, FINDINGS, AND RECOMMENDATIONS.....	7
APPENDICES	
<u>APPENDIX A</u>	
MEMBERSHIP OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.....	10
<u>APPENDIX B</u>	
COMMITTEE CHARGE/STATUTORY AUTHORITY	11
<u>APPENDIX C</u>	
LEGISLATIVE PROPOSAL.....	13

This page intentionally left blank

TRANSMITTAL LETTER

December 14, 2016

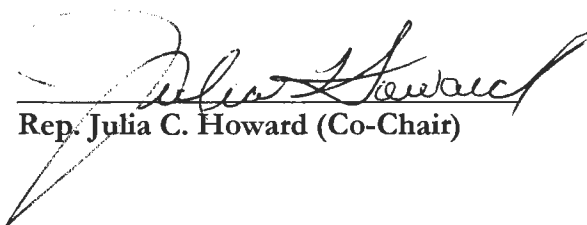
[\[Back to Top\]](#)

TO THE MEMBERS OF THE 2017 REGULAR SESSION
OF THE 2017 GENERAL ASSEMBLY

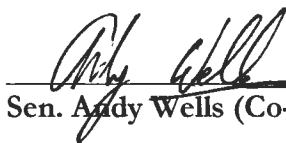
The JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON
UNEMPLOYMENT INSURANCE, respectfully submits the following report to the
2017 Regular Session of the 2017 General Assembly.



Sen. Bob Rucho (Co-Chair)



Rep. Julia C. Howard (Co-Chair)



Sen. Andy Wells (Co-Chair)

This page intentionally left blank

COMMITTEE PROCEEDINGS, FINDINGS, AND RECOMMENDATIONS

[\[Back to Top\]](#)

The Committee on Joint Legislative Oversight Committee on Unemployment Insurance met three times after the 2016 Regular Session. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

The General Assembly created the Committee as part of its unemployment insurance reform legislation in 2013, S.L. 2013-2. Appendix B of the Report contains a copy of the Committee's authorization found in Article 12R of Chapter 120 of the General Statutes. Appendix A lists the current membership of the Committee. The authorization charges the Committee to study the unemployment insurance (UI) program and the workforce development program, review developing issues for the UI system, and monitor the Unemployment Trust Fund and the Unemployment Insurance Reserve Fund.

This interim the Committee discussed the following topics and issues:

- Unemployment Trust Fund balance
- Disaster-related benefits and services
- SCUBI implementation
- Legislative requests from the Division of Employment Security (DES)

Unemployment Insurance Trust Fund

At the October Committee meeting, DES reported on the balance of the Unemployment Trust Fund. The Trust Fund had a balance of just over \$2 billion. Employer contributions through the State unemployment tax (SUTA) provide the revenue for this Fund. Monies in the Fund may only be used to pay unemployment benefits. The Unemployment Insurance Reserve Fund had a balance of \$50.7 million. The 20% surtax imposed on employers SUTA contributions provide the revenue for this Fund. The surtax does not apply whenever the amount in the Unemployment Trust Fund equals or exceeds \$1 billion. Employers did not have to pay this surtax for the 2016 calendar year. Monies in the Reserve Fund are used primarily to pay interest on advances, or loans, from the federal government to the State's Trust Fund to enable the Trust Fund to pay unemployment benefits. Any balance in the Reserve Fund on January 1 of each year that exceeds \$50 million, or the amount required to pay interest on Trust Fund borrowing in the previous year, whichever is higher, is transferred from the Reserve Fund to the Trust Fund.

The US Department of Labor (USDOL) encourages states to reach and maintain a balance in its Unemployment Trust Fund based on the State's Average High Cost Multiple (AHCM) to ensure that its Trust Fund has adequate reserves to fund historically high payouts during economic downturns. The AHCM compares the state's Trust Fund

level to the average of the three highest years of benefit payments over the last 20 years. A state whose Trust Fund has a favorable AHCM is allowed to borrow interest-free. DES reported that North Carolina's Trust Fund balance required to achieve interest-free borrowing based on the AHCM is \$2.3 billion.

Disaster-Related UI Benefits and Services

At the November Committee meeting, DES briefed the Committee on the services it provided in response to Hurricane Matthew and the benefits payable for claims related to the Hurricane. Hurricane Matthew impacted more than 30,000 businesses and thousands of employees. DES provided a physical presence in local offices located in the impacted communities and extended its call center hours during the work week and on Saturdays. The call center received 33,000 calls during the week of October 22nd; that number represents a 169% increase above average call volume.

DES received approximately 9,000 disaster-related unemployment claims. A person who loses employment due to a disaster must first apply for unemployment benefits through the State's regular UI Program. Benefits payable under the regular UI Program are payable from the State's Unemployment Trust Fund. The weekly benefit amount and the duration of benefits are determined based upon the statutory formulas. As of December 12, 2016, DES paid approximately \$600,000 in regular UI benefits for job losses related to the disaster under the regular UI Program. Those benefits are not charged against an employer's account under G.S. 96-11.3(b)(2). In a press release issued on October 22, 2016, the Governor's office announced that the Governor instructed DES to waive the one-week waiting period and job search requirements for people whose employment or self-employment was lost or interrupted as a direct result of Hurricane Matthew. The Committee voted to codify these waivers in its Legislative Proposal, retroactive to October 1, 2016, and applicable to disaster unemployment assistance in the future.

A person who files a disaster-related unemployment claim and who is denied benefits under the State's regular UI Program may be eligible for federally funded disaster unemployment benefits. Examples of situations where a person may not be eligible for unemployment benefits under the regular UI Program, but may be eligible for benefits under the federal program include a person who is self-employed, such as a small business owner, and a person who becomes a primary wage earner due to the disaster-related death of a primary wage earner. Although the payment of these benefits comes from the federally funded program rather than the State's UI Trust Fund, the weekly benefit amount is calculated in the same manner as a benefit under the regular UI Program.

The duration of the federally funded disaster unemployment benefits may last up to 26 weeks. Currently, the maximum duration for unemployment benefits payable under the State's regular UI Program is 13 weeks. A person may be eligible for additional weeks of unemployment benefits under the federally funded program if the person exhausts the 13-weeks of regular unemployment benefits, up to a cumulative total of the 26 weeks allowed under the federal program. However, most claimants were able to

resume work within a couple of weeks. As of December 12, 2016, DES paid approximately \$126,267 in federally funded disaster unemployment benefits.

SCUBI Implementation

DES is a member of the Southeast Consortium Unemployment Benefits Initiative, commonly referred to as SCUBI. The initiative is funded primarily by a \$50 million grant from USDOL as part of a shared UI platform to promote consistency and cost savings across the states. The other member states participating in SCUBI are South Carolina and Georgia. SCUBI will enable DES to retire its antiquated mainframe application that is more than 30 years old. The new system, once implemented, will automate many claims directly that currently require manual staff application. It will afford employers, claimants, and administrators greater efficiency and online access to records and correspondence.

South Carolina will be the first of the three states to activate SCUBI; South Carolina tentatively plans to activate the system in March 2017. Assuming a successful launch by South Carolina, North Carolina plans to activate SCUBI by May 2017, and Georgia will follow in the summer of 2017.

Legislative Requests

DES presented the following list of legislative recommendations to the Committee:

- Waive the waiting week and work search requirements for UI claims due directly to a disaster covered by a federal disaster declaration.
- Exclude paid time off, such as vacation and sick leave, from the definition of severance pay. Severance pay reduces UI benefits.
- Replace "August 1 computation date" with "September 1 of the preceding calendar year" as the trigger date for determining the applicability of the surtax for the Unemployment Insurance Reserve Fund.
- Reduce the time allowed for employers to respond to UI claims from 14 days to 10 days to reflect the speed of electronic communications.
- Make conforming changes required by federal law and as directed by USDOL:
 - Federal law requires NC transfer the UI account if part or all of a business is transferred between employers with substantially common ownership, management or control.
 - Federal law requires NC not transfer the UI account if a predecessor employer acquired the business solely or primarily for the purpose of obtaining a lower contribution rate.

The Committee voted at its final meeting to recommend these changes. The Legislative Proposal and a Summary of the Proposal appear in Appendix C of this Report.

COMMITTEE MEMBERSHIP

[\[Back to Top\]](#)

2015-2016

President Pro Tempore of the Senate
Appointments:

Sen. Bob Rucho (Co-Chair)

Sen. John M. Alexander, Jr.

Sen. Ben Clark

Sen. Wesley Meredith

Sen. Andy Wells

Speaker of the House of Representatives
Appointments:

Rep. Julia C. Howard (Co-Chair)

Rep. Harry Warren (Vice-Chair)

Rep. Dean Arp

Rep. Dana Bumgardner

Rep. Paul Tine (Advisory Member)

COMMITTEE CHARGE/STATUTORY AUTHORITY

[\[Back to Top\]](#)

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 cochairs. 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.)

LEGISLATIVE PROPOSAL

[\[Back to Top\]](#)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

BILL DRAFT 2017-TMxz-1 [v.22] (11/21)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/13/2016 03:08:27 PM

Short Title: Unemployment Insurance Technical Changes. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL, ADMINISTRATIVE, AND CLARIFYING CHANGES TO
3 THE UNEMPLOYMENT INSURANCE LAWS, AS RECOMMENDED BY THE JOINT
4 LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.

5
6 The General Assembly of North Carolina enacts:

7
8 **PART I. DISASTER UNEMPLOYMENT INSURANCE**

9 **SECTION 1.(a)** G.S. 96-1(b) is amended by adding a new subdivision to read:

10 "**§ 96-1. Title and definitions.**

11 ...

12 (b) Definitions. – The following definitions apply in this Chapter:

13 ...

14 (14a) Federal Disaster Declaration. – Declaration of a major natural disaster by the
15 President under the Robert T. Stafford Disaster Relief and Emergency
16 Assistance Act, provided that the declaration allows disaster unemployment
17 assistance under the federal act."

18 **SECTION 1.(b)** G.S. 96-11.3(b)(2) reads as rewritten:

19 "**§ 96-11.3. Noncharging of benefits.**

20 ...

21 (b) To Any Base Period Employer. – Benefits paid to an individual may not be charged to
22 the account of an employer of the individual if the benefits paid meet any of the following
23 descriptions:

24 ...

25 (2) They were paid to an individual for unemployment due directly to a ~~major~~
26 ~~natural disaster covered by a federal disaster declaration, declared by the~~
27 ~~President pursuant to the Disaster Relief Act of 1970, and the individual~~
28 ~~receiving the benefits would have been eligible for disaster unemployment~~
29 ~~assistance under this federal act if the individual had not received benefits under~~
30 ~~this Chapter."~~

31 **SECTION 1.(c)** G.S. 96-14.1(b) reads as rewritten:

32 "**§ 96-14.1. Unemployment benefits.**

33 ...



* 2 0 1 7 - T M X Z - 1 - V - 2 2 *

1 (b) Valid Claim. – To obtain benefits, an individual must file a valid claim for
2 unemployment benefits, register for work, and have a weekly benefit amount calculated pursuant
3 to G.S. 96-14.2(a) that equals or exceeds fifteen dollars (\$15.00). An individual must serve a
4 one-week waiting period for each claim ~~filed.~~ filed, except no waiting period applies under this
5 subsection to a claim for unemployment due directly to a disaster covered by a federal disaster
6 declaration. A valid claim is one that meets the employment and wage standards in this subsection
7 for the individual's base period. A valid claim for a second benefit year is one that meets the
8 employment and wage standards in this subsection since the beginning date of the prior benefit
9 year and before the date the new benefit claim is filed:

10 ..."

11 **SECTION 1.(d)** G.S. 96-14.9 is amended by adding a new subsection to read:

12 **"§ 96-14.9. Weekly certification.**

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

- 17 (1) File a claim for benefits.
- 18 (2) Report as requested by the Division and present valid photo identification
19 meeting the requirements of subsection (k) of this section.
- 20 (3) Meet the work search requirements of subsection (b) of this section.

21 (b) Work Search Requirements. – The Division must find that the individual meets all of
22 the following work search requirements:

- 23 (1) The individual is able to work.
- 24 (2) The individual is available to work.
- 25 (3) The individual is actively seeking work.
- 26 (4) The individual accepts suitable work when offered.

27 ...

28 (l) Federal Disaster Declaration. – An individual who is unemployed due directly to a
29 disaster covered by a federal disaster declaration has satisfied the work search requirements for
30 any given week in the benefit period unless the Division requires the individual to conduct a work
31 search."

32 **SECTION 1.(e)** This section is effective October 1, 2016.

33
34 **PART II. PAID TIME OFF EXCLUDED FROM SEVERANCE PAY**

35 **SECTION 2.(a)** G.S. 96-15.01(c) reads as rewritten:

36 "(c) Separation Payments. – An individual is not unemployed if, with respect to the entire
37 calendar week, the individual receives or will receive as a result of the individual's separation from
38 work remuneration ~~in any form in one or more of the forms listed in this subsection.~~ Amounts paid
39 to an individual for paid time off that was available, but unused, before the individual's separation
40 under a written policy in effect before the individual's separation are not remuneration as a result
41 of separation. If the remuneration is given in a lump sum, the amount must be allocated on a
42 weekly basis as if it had been earned by the individual during a week of employment. An
43 individual may be unemployed, as provided in subsection (b) of this section, if the individual is
44 receiving payment applicable to less than the entire ~~week;~~ week.

- 45 (1) ~~Wages in lieu of notice.~~
- 46 (2) ~~Accrued vacation pay.~~
- 47 (3) ~~Terminal leave pay.~~
- 48 (4) ~~Severance pay.~~
- 49 (5) ~~Separation pay.~~
- 50 (6) ~~Dismissal payments or wages by whatever name."~~

1 **SECTION 2.(b)** This section becomes effective July 1, 2017, and applies to claims for
2 benefits filed on or after that date.

3
4 **PART III. MISCELLANEOUS CHANGES**

5 **SECTION 3.1** G.S. 96-9.7(b) reads as rewritten:

6 **"§ 96-9.7. Surtax for the Unemployment Insurance Reserve Fund.**

7 (a) Surtax Imposed. – A surtax is imposed on an employer who is required to make a
8 contribution to the Unemployment Insurance Fund equal to twenty percent (20%) of the
9 contribution due under G.S. 96-9.2. Except as provided in this section, the surtax is collected and
10 administered in the same manner as contributions. Surtaxes collected under this section must be
11 credited to the Unemployment Insurance Reserve Fund established under G.S. 96-6.2. Interest and
12 penalties collected on unpaid surtaxes imposed by this section must be credited to the
13 Supplemental Employment Security Administration Fund. Penalties collected on unpaid surtaxes
14 imposed by this section must be transferred to the Civil Penalty and Forfeiture Fund established in
15 G.S. 115C-457.1.

16 (b) Suspension of Tax. – The tax does not apply in a calendar year if, as of ~~the preceding~~
17 ~~August 1 computation date, September 1 of the preceding calendar year,~~ the amount in the State's
18 account in the Unemployment Trust Fund equals or exceeds one billion dollars (\$1,000,000,000)."

19 **SECTION 3.2.(a)** G.S. 96-15(b)(2) reads as rewritten:

20 "(2) Adjudication. – When a protest is made by the claimant to the initial or
21 monetary determination, or a question or issue is raised or presented as to the
22 eligibility of a claimant, or whether any disqualification should be imposed, or
23 benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred
24 to an adjudicator. The adjudicator may consider any matter, document or
25 statement deemed to be pertinent to the issues, including telephone
26 conversations, and after such consideration shall render a conclusion as to the
27 claimant's benefit entitlements. The adjudicator shall notify the claimant and all
28 other interested parties of the conclusion reached. The conclusion of the
29 adjudicator shall be deemed the final decision of the Division unless within 30
30 days after the date of notification or mailing of the conclusion, whichever is
31 earlier, a written appeal is filed pursuant to rules adopted by the Division. The
32 Division shall be deemed an interested party for such purposes and may remove
33 to itself or transfer to an appeals referee the proceedings involving any claim
34 pending before an adjudicator.

35 Provided, any interested employer shall be allowed ~~14 days~~ 10 days from
36 the mailing or delivery of the notice of the filing of a claim against the
37 employer's account, whichever first occurs, to file with the Division its protest
38 of the claim in order to have the claim referred to an adjudicator for a decision
39 on the question or issue raised. Any protest filed must contain a basis for the
40 protest and supporting statement of facts, and the protest may not be amended
41 after the ~~14 day~~ 10-day period from the mailing or delivery of the notice of
42 filing of a claim has expired. No payment of benefits shall be made by the
43 Division to a claimant until one of the following occurs:

- 44 a. The employer has filed a timely protest to the claim.
45 b. The ~~14 day~~ 10-day period for the filing of a protest by the employer has
46 expired.
47 c. A determination under this subdivision has been made.

48 Provided further, no question or issue may be raised or presented by the
49 Division as to the eligibility of a claimant, or whether any disqualification
50 should be imposed, after 45 days from the first day of the first week after the
51 question or issue occurs with respect to which week an individual filed a claim

1 for benefits. None of the provisions of this subsection shall have the force and
2 effect nor shall the same be construed or interested as repealing any other
3 provisions of G.S. 96-18.

4 An employer shall receive written notice of the employer's appeal rights and
5 any forms that are required to allow the employer to protest the claim. The
6 forms shall include a section referencing the appropriate rules pertaining to
7 appeals and the instructions on how to appeal."

8 **SECTION 3.2.(b)** This section becomes effective July 1, 2017, applies to claims for
9 benefits filed on or after that date, and applies to tax calculations on or after that date.

10 11 **PART IV. FEDERAL CONFORMING CHANGES**

12 **SECTION 4.(a)** G.S. 96-11.7 reads as rewritten:

13 "**§ 96-11.7. ~~Acquisition of employer and transfer~~ Transfer of account to another employer.**

14 (a) ~~Mandatory Transfer.—Acquisition of a Business.~~ — When an employer acquires all of
15 the ~~organization, trade, or~~ business of another employer, the account of the predecessor must be
16 transferred as of the date of the acquisition to the successor ~~employer~~ for use in the determination
17 of the successor's contribution rate. This ~~mandatory transfer subsection~~ does not apply when there
18 is no common ownership between the predecessor and the successor and the successor acquired
19 the assets of the predecessor in a sale in bankruptcy. ~~In this circumstance, the successor's~~
20 ~~contribution rate is determined without regard to the predecessor's contribution rate.~~

21 (b) ~~Consent.—Acquisition of Portion of a Business.~~ — When a distinct and severable
22 portion of an employer's ~~organization, trade, or~~ business is transferred to a successor employer and
23 the successor employer continues to operate the acquired ~~organization, trade, or~~ business, the
24 portion of the account of ~~the transferring employer that related~~ attributable to the transferred
25 business may, with the approval of the Division, be transferred by mutual consent ~~from the~~
26 ~~transferring employer~~ to the successor ~~employer.~~ employer as of the date of the transfer. A
27 successor employer that is a related entity of the transferring employer is eligible for a transfer
28 from the transferring employer's account only to the extent permitted by rules adopted by the
29 Division. No transfer may be made to the account of an employer that has ceased to be an
30 employer under G.S. 96-11.9.

31 If a transfer of part or all of an account is allowed under this subsection, ~~but is not mandatory,~~
32 the successor employer requesting the transfer may make a request for transfer by filing an
33 application for transfer with the Division within two years after the date the business was
34 ~~transferred transferred, or the date of notification by the Division of the right to request an account~~
35 ~~transfer, whichever is later. If the application is approved and the application was filed within 60~~
36 ~~days after notification from the Division of the right to request a transfer, the transfer is effective~~
37 ~~as of the date the business was transferred. If the application is approved and the application was~~
38 ~~filed later than 60 days after notification from the Division, the effective date of the transfer is the~~
39 ~~first day of the calendar quarter in which the application was filed.~~

40 ~~If the effective date of a transfer of an account under this subsection is after the computation~~
41 ~~date in a calendar year, the Division must recalculate the contribution rate for the transferring~~
42 ~~employer and the successor employer based on their account balances on the effective date of the~~
43 ~~account transfer. The recalculated contribution rate applies for the calendar year beginning after~~
44 ~~the computation date.~~

45 (c) ~~Continuity of Control.—Acquisition by Related Party.~~ — If an employer transfers its
46 business, or a portion thereof, to another person and, at the time of the transfer, there is
47 substantially common ownership, management or control of the predecessor employer and the
48 transferee, then the portion of the account attributable to the transferred business must be
49 transferred to the transferee as of the date of the transfer.

50 ~~Any new employer that has continuity of control with an existing business enterprise shall~~
51 ~~continue to be the same employer as the existing business enterprise for the purposes of this~~

1 Chapter as before the existence of the new employer. The Division shall assign any new employer
2 with continuity of control to the account of the existing business enterprise. Any new employer
3 with continuity of control shall not request or maintain an account with the Division other than the
4 account of the existing business enterprise. If a new employer receives a new account and the
5 Division subsequently finds that such new employer has continuity of control with an existing
6 business enterprise, the Division shall recalculate the annual tax rates based on the combined
7 annual account balances of the new employer and the existing business enterprise.

8 Continuity of control—Substantially common ownership, management or control exists if one or
9 more persons, entities, or other organizations owning, managing, or controlling the business
10 enterprise remain in ownership, management or control of the new employer. transferee. Control
11 may occur by means of ownership of the organization conducting the business enterprise,
12 business, ownership of assets necessary to conduct the business enterprise, business, security
13 arrangements or lease arrangements covering assets necessary to conduct the business enterprise,
14 business, or a contract when the ownership, stated arrangements, or contract provide for or allow
15 direction of the internal affairs or conduct of the business enterprise. business. Control is not
16 affected by changes in the form of a business enterprise, business, reorganization of a business
17 enterprise, business, or expansion of a business enterprise. business.

18 (c1) Acquisition to Obtain Lower Contribution Rate. — The account of the predecessor
19 employer will not be transferred if the Division finds that a person acquired the business solely or
20 primarily for the purpose of obtaining a lower contribution rate.

21 (d) Contribution Rate. — If the effective date of a transfer of an account under this section
22 is after the computation date in a calendar year, the Division must recalculate the contribution rate
23 for the transferring employer and the transferee based on their account balances on the effective
24 date of the account transfer. Notwithstanding the other provisions in this section, when an account
25 is transferred in its entirety to a successor employer, the transferring employer's contribution rate
26 is the standard beginning rate.

27 Notwithstanding the other provisions in this section, if a successor employer to whom an
28 account is transferred was an employer as of the date of the business transfer, the account transfer
29 does not affect the successor employer's contribution rate for the calendar year in which the
30 business was transferred. If the successor employer was not an employer as of the date of the
31 business transfer, the successor employer's contribution rate for the year in which the business
32 transfer occurs is the standard beginning rate unless one of the following applies:

- 33 (1) The account transfer is a mandatory transfer, in which case the contribution rate
34 of the successor employer is the contribution rate of the transferring employer.
- 35 (2) The account transfer is by consent and the successor employer filed an
36 application within 60 days of the business transfer, in which case the
37 contribution rate of the successor employer is the contribution rate of the
38 transferring employer. If the business was transferred from more than one
39 employer and the transferring employers had different contribution rates, the
40 contribution rate of the successor employer is the rate calculated as of the
41 effective date of the account transfers.

42 (e) Liability for Contributions. — An employer that, by operation of law, purchase, or
43 otherwise is the successor to an employer liable for contributions becomes liable for contributions
44 on the day of the succession. This provision-subsection does not affect the successor's liability as
45 otherwise prescribed by law for unpaid contributions due from the predecessor.

46 (f) Deceased or Insolvent Employer. — When the organization, trade, or business of a
47 deceased person or of an insolvent debtor is taken over and operated by an administrator, executor,
48 receiver, or trustee in bankruptcy, the new employer automatically succeeds to the account and
49 contribution rate of the deceased person or insolvent debtor without the necessity of filing an
50 application for the transfer of the account.

1 (g) Continuation of Existing Account. – Any transferee with substantially common
2 ownership, management or control of an existing business must not request or maintain an account
3 with the Division other than the account of the existing business. If a transferee receives a new
4 account and the Division subsequently finds that such new employer has substantially common
5 ownership, management or control with an existing business, the Division must recalculate the
6 annual tax rates based on the combined annual account balances of the new employer and the
7 existing business."

8 **SECTION 4.(b)** This section becomes effective July 1, 2017.

9
10 **PART V. EFFECTIVE DATE**

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



Bill Draft 2017-TMxz-1: Unemployment Insurance Technical Changes.

2017-2018 General Assembly

Committee:	Joint Legislative Oversight Committee on Unemployment Insurance	Date:	December 14, 2016
Introduced by:		Prepared by:	Greg Roney Staff Attorney
Analysis of:	2017-TMxz-1		

OVERVIEW: *The Committee's Legislative Proposal has 5 Parts as follows:*

- *Part I would waive the waiting week and work search requirements for unemployment insurance (UI) claims due directly to a disaster covered by a federal disaster declaration. These disaster UI benefits would also not be charged to individual employer's accounts.*
- *Part II would exclude paid time off, such as vacation and sick leave, from the definition of severance pay. Severance pay reduces UI benefits.*
- *Part III would make 2 miscellaneous changes:*
 - *Technical correction replacing "August 1 computation date" with "September 1 of the preceding calendar year."*
 - *Reduces the time allowed for employers to respond to UI claims from 14 days to 10 days to reflect the speed of electronic communications.*
- *Part IV would make 2 conforming changes required by federal law:*
 - *Federal law requires NC transfer the UI account if part or all of a business is transferred between employers with substantially common ownership, management or control.*
 - *Federal law requires NC not transfer the UI account if a predecessor employer acquired the business solely or primarily for the purpose of obtaining a lower contribution rate.*
- *Part V would set the effective date.*

Section	Bill Analysis	Effective Date
PART I: DISASTER UNEMPLOYMENT INSURANCE		
1(a)	Defines federal disaster declaration as a major natural disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The Presidential declaration must allow disaster unemployment assistance under the federal act.	10/1/2016
1(b-e)	Waives the waiting week and work search requirements for UI claims due directly to a disaster covered by a federal disaster declaration. These disaster	10/1/2016

Karen Cochran-Brown
Director



Legislative Analysis
Division
919-733-2578

Draft

Page 2

Section	Bill Analysis	Effective Date
	UI benefits would also not be charged to individual employer's accounts. Current law expressly waives charging employer accounts for disaster UI benefits.	
PART II: PAID TIME OFF EXCLUDED FROM SEVERANCE PAY		
2	UI benefits are reduced by severance pay. Current law treats paid time off, such as vacation and sick leave, as severance pay and reduces UI benefits. This section changes the treatment of accrued paid time off and excludes paid time off from the definition of severance pay. Therefore, payments representing paid time off available to the employee before separation under a written policy would not affect UI benefits.	7/1/2017
PART III. MISCELLANEOUS CHANGES		
3.1	Technical correction replacing "August 1 computation date" with "September 1 of the preceding calendar year."	7/1/2017
3.2	Reduces the time allowed for employers to respond to UI claims from 14 days to 10 days to reflect the speed of electronic communications. The NC Department of Commerce's Division of Employment Security (DES) anticipates a new computer system will be operational before the 7/1/2017 effective date of this section. The modern computer system will offer electronic communications to employers.	7/1/2017
PART IV. FEDERAL CONFORMING CHANGES		
4	Federal law requires NC transfer the UI account if part or all of a business is transferred between employers with substantially common ownership, management or control. Federal law requires NC <u>not</u> transfer the UI account if a predecessor employer acquired the business solely or primarily for the purpose of obtaining a lower contribution rate. The US Department of Labor (USDOL) sent the NC Department of Commerce's Division of Employment Security (DES) a letter notifying DES that NC law was nonconforming. This section adds language to conform to federal law by transferring the UI account attributable to a business or portion of a business between related parties. This section also prevents the transfer of the UI account if DES finds that a person acquired the business solely or primarily for the purpose of obtaining a lower contribution rate.	7/1/2017
PART V. EFFECTIVE DATE		
5	Except as otherwise provided, this act is effective when it becomes law.	