



MINUTES

House Unemployment Fraud Task Force

Tuesday, April 3, 2012

10:00 A.M.

Room 643 / Legislative Office Building

I. Committee Members & Staff:

Co-Chairs: Rep. Marilyn Avila
Rep. G. L. Pridgen

Members: Rep. Tim Moffitt
Rep. Harry Warren
Rep. Rodney Moore
Rep. Susi Hamilton

Rep. Julia Howard
Rep. Trudi Walend (absent)
Rep. Annie Mobley

Clerk: Beverly Slagle

Attending House Sargent at Arms: Martha Gadison Fred Hines

II. Staff: Kristin Walker (Fiscal Research) Rodney Bizzell (Fiscal Research)
Phyllis Pickett (Bill Drafting) Cindy Avrette (Research)
Janice Paul Research)

III. Call To Order:

A quorum present, the House Unemployment Fraud Task Force (the Task Force) meeting was called to order at 10 AM by the presiding Co-Chair, Representative G. L. Pridgen who welcomed members, staff, and guests. The Chair made a point that the House Unemployment Fraud Task Force was not charged to stop or cut benefits to deserving unemployed but rather to look at and try to stop abuse of the system and stop unemployment fraud. He went on to inform the committee and the audience that today's meeting would be informational and hopefully lay the ground work to work closely with the Secretary of Commerce to solve a very difficult problem. He then introduced the first Speaker.

IV. House Unemployment Fraud Task Force Authorization and Meeting Overview-Cindy Avrette (Research Division): Ms. Avrette gave a presentation (see Attachment A). She began by giving an overview to see where this Task Force fits. She gave her background and informed that she had done work with the Employment Security Commission (now Department of Employment Security) but mostly on the tax side. She reminded the committee that in the past session the finance committees spent a considerable time looking at the state UI fund trying to solve the insolvency of the fund.

Ms. Avrette said that in researching for this Task Force she found that the GAO had a study back in 2002. In that study it noted that the health of a state's trust fund is dependent on three separate conditions: the amount of taxes collected the current economic conditions and level of unemployment, and the ability of the state to accurately and timely determine the benefits. She noted that the state's UI fund is indebted to the tune of \$2.8B dollars. She stressed the fact that the Task Force has very little influence regarding second condition, *the current economic conditions*

and level of unemployment. The first and third variables or conditions are more in the control of the legislative body. Again, in the last session, the Finance Committee spent a great deal of time discussing, what should the proper taxation be to make sure the trust fund is solvent. It enacted Senate Bill 99 as part of the budget bill which directed the Secretary of Commerce to engage in a study to try to figure out what the right balance of taxes to bring the trust fund into solvency. Secretary Crisco has put that contract out through the W. E. Upjohn Institute for Employment Issues. The report should be completed by the end of this month, the Revenue Law Study Committee has devoted a couple of its meeting to this variable and will most likely look at this again in its May 2nd meeting when it can hear the report. Also, the State Chamber has commissioned its own report on this issue as well as broader issues that impact the unemployment system. This report should be available the end of April and she was certain the chamber will be sharing that report with this Task Force.

Ms. Avretta explained (discussing enforcement) that whenever you have a system of taxation you are not only trying to make certain the tax rate is right but you are trying to make certain that the people who owe the tax are paying the tax that is owed. She explained that a lot of the issues that occurred in the early 2000's was something called SUTA dumping. As many of you are already aware, the unemployment insurance system and for the states the tax rates are primarily based on the experience ratings of employers. For the employer who has a higher unemployment history pays a higher tax rate. What the USDOL and several states found in the early 2000's was that companies were restructuring through mergers, acquisitions, and business plans to escape their poor unemployment history to obtain a lower tax rate. Congress did address that issue in 2004 with legislation which put in provisions that don't allow it and the legislation required the states to create systems to detect it. Although it continues to be a topic today, the emphasis has shifted more to program integrity. As second level of enforcement that USDOL as well as the states are constantly battling on the tax side of the equation is the misclassification of the employees as independent contractors.

Ms. Avretta said that if the committee looks at the Authorization for this Task Force, you will see that this is the part of the puzzle that this committee has been asked to delve into. She emphasized that although that accuracy of benefits sounds simple, it is very much a balancing act. It is requiring the state to accurately determine the benefits in a timely manner and to accurately and quickly discover "over payments" and recover those over payments.

Ms. Avretta explained that each state has very wide latitude to design its own program. Each state decides what the taxable wage base and rate for its state is going to be, it decides what its coverage is going to be, what the qualifying requirements are and what the eligibility requirements are. It decides the benefit amount, the benefit duration, the waiting periods, the appeals, etc. For the reasons previously discussed, Ms. Avretta advised the Task Force that it was very difficult to compare different state's unemployment programs because no two state laws are the same. Even if the state laws are the same or similar, they may be interpreted or administered differently you need to be focus in on your own state's program and what it needs to do to do a improve its program.

She continued by saying that the USDOL analyses all the unemployment data and diagnoses potential problems and develops strategies, which can be traced back to the 2004 SUTA legislation described earlier. She then gave an overview of the funding of the program which is laid out in the presentation under the "Unemployment Insurance Taxes," which also addresses North Carolina's debt and higher tax rate.

Improper Payments in NC UI Program: Ms. Avretta explained that the key component to program integrity is the accuracy of benefit payments. She referred to the USDOL website, which she used to provide information. Part of what the site does is quantifies the improper payments that

are being made in each state. She said that the key is when you look at the data is to remember that an improper payment isn't just an over payment, it can also be an under payment. And that all improper payments are fraudulent payments. But every improper payment degrades and weakens the integrity of the program. She referred to a chart which is shown in Attachment A. Again, she emphasized how difficult it was to compare state-to-state because each state defines a fraudulent payment differently, but she was assuming, based on NC's definition of a fraudulent overpayment, the amount estimated over the three year period shown is 2.4%. She mentioned another interesting statistic from the USDOL website called its operational rate which is a percentage of overpayments, whether fraudulent or otherwise, that it believes that the DSC should reasonably be expected to detect and recover. That percentage in NC is 5.3%.

She followed the presentation (Attachment A) to the close of her presentation.

V. Department of Commerce: Secretary Crisco:

Secretary Crisco introduced his staff who would be presenting to the Task Force and asked them to stand to be recognized as follows: (Reference ALL presentations in ATTACHMENT B)

- A. Purpose and Scope of Unemployment Insurance:** Lockhart Taylor, Director of Governmental Relations, Division of Employment Security, Department of Commerce
- B. Overview of the Claims Process:** David Canady, UI Director, DES, Department of Commerce
- C. Benefit Payment Control: Detection and Collection of Overpayments:** Chanita Arceneaux, Integrity Unit, DES, Department of Commerce
- D. Adjudications: Local Office or Central Office:** Cindy Walters, Deputy Chief of Claims, DES, Department of Commerce
- E. Appeals:** Henry Burgwyn, Chief Appeals referee, DES, Department of Commerce
- F. Commission Appeals:** Tom Hodges, Chief Legal Counsel, DES, Department of Commerce
- G. Employment Tax Contributions:** Ted Brinn, Jr., Field Tax Operations Manager, DES, Department of Commerce

The Secretary then addressed the Task Force saying that last year the USDOL reached out to eleven (11) states they termed as high impact to assist in efforts to reduce improper payments, North Carolina was among those. He explained that this was not because of our overpayment rate but rather because of our size and impact we could have on the issue. Since then the division has implemented a cross-functional Task Force to create a strategic plan to counter improper payments and implement a "weekly" national data base of new hires, instead of monthly. Within the last two (2) weeks, DES has implemented the State Information Data Exchange System, known as SIS, which helps improve the unemployment insurance exchange process with employers. Secretary Crisco told the members they would hear more about this later on, he then turned the podium over to Lockhart Taylor.

- A. Purpose and Scope of Unemployment Insurance:** Mr. Taylor gave an overview of the purpose and scope of the Unemployment Insurance Program and referenced the statutory provisions are defined in G.S. Chapter 96-13. He defined the benefactor of insurance as being premised on "*the determination that an individual who has lost his/her job through no fault of their own, who is actively seeking work and are able and available to return to work.*" He made the point that the recession has ushered in an unprecedented rise in claims but also increased fraud to the system. Six months, prior to the beginning to this recession, a plan was developed by the agency to close forty-six (46) of our ninety-one (91) offices across the state.

In 2008, the agency began to recover from the recession of 2002. Claims were down and the unemployment insurance trust fund was rebuilding. Unlike the previous recessions on a ten (10) year cycle, the recession came in four (4) years early and has paid out \$6B in state and federal funds. He then gave the statistics from year 2007 through 2010 and explained that because of the rising claims fraud rose. Mr. Taylor informed the implementation of programs (see Attachment B). He made the point that, "It is important to recognize that although fraud payments are improper, not all improper payments are fraud." He described a benefit accuracy measure used by USDOL called BAM to produce an improper payment rate, and explained its formula for measurement to determine rates. He listed the leading causes of improper payments identified as such:

- 1. Individuals returning to work and continue to file for benefits*
- 2. Employers or third party administrators filing untimely or inaccurate separation information.*
- 3. Claimants failing to register to register with the local unemployment office.*

Mr. Taylor also pointed out that another issue that we have been face with are the multiple extensions of unemployment benefits, which has presented a greater challenge to the agency in keeping fraud levels low. Our agency has provided data to legislators to assist with this problem and we are eager to assist this committee in its efforts.

Mr. Taylor commends the Task Force in thinking out of the box to utilize the actual expertise of the individuals who do this work on a daily basis, and thanked the Committee for its efforts.

B. Overview of the Claims Process-David Canady:

Mr. Canady gave an extensive overview of the Claims Process as laid out in the UI Manual. He educated the Task Force on the process of keeping records and the reemployment services provided by the Division of Work for Solutions, and what that service included. Mr. Canady described the weekly quality checks of claims paid, denied, and how the results of the findings are utilized and that they establish the improper payments that is shared with interested parties.

Mr. Canady informed the Task Force that NC is one of four (4) states who participated in what is called the Southeast Consortium, which relies heavily on technology to serve job seekers, claimants and employers. The Consortium was funded by USDOL for a period of eighteen (18) months; the purpose was to determine the feasibility of creating a benefit system that could serve multiply states. The study was completed on time and within budget. It was found that it is feasible to create a system to serve multiple states in unemployment insurance program. USDOL awarded a \$50M grant to fund this system which will help tremendously in serving employers and claimants.

C. Benefit Payment Control-Chanita Arceneaux: Ms. Arceneaux explained to the Task Force that NC and other states began a more in-depth focus on Integrity and the reduction of improper payments. As a result, in October of 2011 our agency created the Benefits Integrity Department which she oversees. She described the main objective of the department was to strengthen and ensure the prevention, detection and recovery of all improper payments. She described the department as having three (3) units: monetary vision unit, benefit payment control unit, and fraud investigation unit. The fraud investigation unit are tasked with three (3) main responsibilities:

- 1. Investigation of potential instances of fraud**

2. Assistance of the prosecution of those individuals
3. The recovery of any fraudulently released benefits

She gave a review of the most common causes of fraud, as referenced previously. She defined an improper payment for which an individual was not eligible to receive. A duplicate payment or under payment (an overpayment or underpayment), is not considered an improper payment.

If a person is found to have committee fraud they are penalized for one year from receiving benefits. As a point of reference Ms. Arceneaux provided a pre-recession in 2006, our fraud overpayments were \$8.8M and for last year our fraud overpayments were \$18M. Fraud is a Class 1 Misdemeanor.

Ms. Arceneaux described how tips come in to the agency. Approximately eighty-seven hundred (8700) of the twenty-one thousand (21,000) of our pending cases came from tips and leads from individuals across the state. See (Attachment B).

Ms. Arceneaux described the collection process for fraudulent overpayments. Due to the inability for individuals to repay the overpayment in a lump sum our recovery efforts can go for an extended period of time. Due a statute of limitations, we have ten (10) years to actively pursue payments. There are numerous ways in which to collect, they are:

- Payment Agreements
- Intercept State Refund
- Intercept Lottery Winnings
- Intercept funds they are entitled to receive via other state unemployment insurance benefits
- Actively pursuing the Treasury Offset Program where we can intercept Federal Tax Refunds.

D. Adjudications: Local Office or Central Office:

Ms. Cindy Walters gave an overview of the benefit process and the steps for a claimant and the agency. In her opinion, the General Assembly improved the process in 2006 by reducing the time limitation on employer response to claims. Prior to that legislation, the employer had fifteen (150 days for a timely response, it was reduced to ten (10) days in 2006.

She discussed the new systems put in place which will enhance our effort to identify a problem before the money goes out the door.

She reviewed the determinations and gave additional numbers. She made the observation that we were back to 2006-2007 levels of determination levels. Hopefully, this is a sign we are coming out of the recession. (ATTACHMENT B).

She made the point that in 2006-2007, a claimant had twenty-six (26) opportunities to report their eligibility and earnings correctly or not. Since the recession, those opportunities have jumped to ninety-nine (99) to report their eligibility.

Ms. Walters thanked the committee and emphasized that agency was doing a good job and was positioned to detect and prevent fraud. She also told the Task Force that the agency needed their help to put Integrity at the forefront.

E. Appeals-Henry Burgwyn: He explained the process of Appeals, referring to his presentation and describes the herring process, burden of proof, etc. (See Attachment B).

F. Commission Appeals-Tom Hodges: Mr. Hodges explained the process of Commission Appeals. (SEE ATTACHMENT B)

G. Employment Tax Contributions-Ted Brinn, Jr.: Mr. Brinn, Jr. described the process of how employers are taxed for unemployment benefits, investigations of misreporting, independent contractor, tax compliance work, etc. He emphasized the importance of the Tax Compliance efforts and how, in his opinion, they changed the culture through tax Compliance. (See ATTACHMENT B)

VI. Unemployment Compensation Program Integrity: The Chair requested that the committee members submit any ideas that they may have and welcomed anyone in the audience (vendors, etc.) who would like to weigh in on comments made.

Gay Gilbert, USDOL, Administrator, Office of Unemployment Insurance, emphasized the importance of integrity. She informed the members that the UI program had previously focused on detection and the department collected data on Recovery but had never been about the business of Prevention. The key here is to get to the improper payments before they happen. She reviewed the three (3) root causes of improper payments, and mentioned that NC actually exceeds the national average on at least two (2) of those root causes. The three (3) are as follows:

1. Benefit year earnings. Nationally, ½ of the dollars paid in this category are for five (5) weeks or more, moving into fraud territory.
2. Incomplete or inaccurate separation information when determining eligibility. The key to that employers responding to the UI agency at the right time.
3. Employment registration (Not a NC issue)

Ms. Gilbert informed the members that UI issued a broad call-to-action was implemented, last spring. Since then all states have convened cross-functional task forces, with NC was among the first to develop a state specific strategic plan around getting the rate down. Another key was originally Integrity was primarily focused on Benefits Payment Control unit and not a systemic thing. Today, we focus on “everyone” who is in the system and how their actions impact UI improper payments. See ATTACHMENT C for the remainder of her presentation.

Douglas J. Holmes, President UWC-Strategic Services: Best Practices for Improper Payment Prevention, Detection, and Recovery: See ATTACHMENT C. He began the presentation by saying that UI is a social insurance program, NOT public assistance – which means Integrity is very important in the system. Integrity means that as there is administration of the program that the agency pays attention and properly administers the program. He cited recent legislation, HR 3630, which reinforced in federal law that states are obligated to require that individuals be able and available and actively seeking work in order to draw benefits. One point he emphasized was the amount of the collection withholding policy of NC. Most states withhold 100% of a benefit to collect overpayments; NC’s limit is 50%. Mr. Holmes did not agree with a limit. He presented the following suggestions:

- Withhold 100% for collection
- Increase the penalties for fraud and disqualifications for benefits (NC is below national standards; UI will be reviewing the policy)
- Wavier provisions / NC has multiple provisions which make it difficult to keep up with (UI will be reviewing the array of waivers in place in NC)

- Publicize criminal activity and awareness
- Use a complete array of cross-matches that identify workers claiming benefits
- New hire reporting – Employers submitting reports
- Cross match tools, i.e., prisoners receiving benefits (probably not available for work ☺)
- Dedicate staffing and system resources to use information effectively
- Work with employers to exchange information electronically to identify issues, overpayments, and prosecute fraud. This is a big issue for employers, electronic exchange saves the business money and it closes the loop for follow-up.

VII. Adjournment: With no further discussion or questions, the committee meeting was adjourned at 3:03 P.M.

Signature