

**Department of Planning and Budget
2021 Fiscal Impact Statement**

1. Bill Number: HB2040

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Hudson

3. Committee: Labor and Commerce

4. Title: Unemployment compensation; failure to respond; continuation of benefits; repayment of overpayments.

5. Summary: Provides that an employer shall be deemed to have established a pattern of failing to respond timely or adequately to written requests for information relating to claims if the Virginia Employment Commission determines that the employer has failed to respond timely or adequately to a written request for information relating to a claim on two or more occasions within a 48-month window and requires such employer to pay a penalty upon the employer's second such failure to respond timely or adequately. Under current law, such pattern is established after four failures, and the penalty is assessed after the third failure. The bill provides that if an employer fails to respond timely or adequately to a written request by the Commission for information relating to a claim, the employer forfeits any appeal rights to that claim.

The bill provides that when a claimant has begun receiving unemployment benefits, such benefits shall continue to be paid under a presumption of continuing entitlement unless or until a deputy determines, in a process providing notice and opportunity to be heard to the claimant, that the claimant is ineligible or disqualified.

The bill provides that an individual who receives an overpayment of unemployment benefits is not liable to repay the overpayments to the Commission if the Commission determines that: (i) the overpayment was not due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient and its recovery would be against equity and good conscience; (ii) the overpayment was a direct result of inducement, solicitation, or coercion on the part of the employer; or (iii) the overpayment occurred due to administrative error.

The bill requires the Commission to waive an overpayment of benefits under a federal unemployment benefit program if the program authorizes the waiver. The bill provides that any person who receives an overpayment of benefits is not required to repay such overpayment if the Commission determines that the overpayment was made because the employer failed to respond timely or adequately to a written request by the Commission for information relating to the claim.

Finally, the bill prohibits a determination with respect to benefit overpayments to be issued until after a determination or decision that finds a claimant ineligible or disqualified for benefits previously paid has become final.

6. Budget Amendment Necessary: Yes. Item 131. See item 8, below.

7. Fiscal Impact Estimates: Preliminary. See Item 8.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2021	0	0	n/a
2022	\$18.7 million		Trust Fund
	\$250,000	5.0	GF
2023	\$6.3 million		Trust Fund
	\$250,000	5.0	GF
2024	\$6.4 million		Trust Fund
	\$250,000	5.0	GF
2025	\$6.4 million		Trust Fund
	\$250,000	5.0	GF
2026	\$6.4 million		Trust Fund
	\$250,000	5.0	GF
2027	\$6.4 million		Trust Fund
	\$250,000	5.0	GF

8. Fiscal Implications: Because of the broad language in the bill, the Virginia Employment Commission (VEC) requested that the U.S. Department of Labor (USDOL) review this legislation to determine its impact on unemployment benefits under federal law. USDOL has informed the VEC that the bill does not conform to all federal requirements.

The bill does not establish a waiver process where each request is reviewed on a case-by-case basis, instead the bill creates a blanket policy of not requiring an overpayment due to failure of an employer to respond timely or adequately to a written request by the VEC for information relating to the claim to be recovered. VEC indicates that, under federal law, a waiver of overpayments must be done on a case-by-case basis and not be part of a blanket policy. As a result, USDOL has advised the VEC that the Commonwealth is at-risk of losing its federal \$35.0 million administrative grant for the unemployment insurance program.

Further, Virginia businesses are at-risk of losing their Federal Unemployment Tax Act (FUTA) tax credit. FUTA provides for payments of unemployment compensation to workers who have lost their jobs. The loss of this tax credit is estimated to increase employers' tax burden by \$1.5 billion. An employer would see their FUTA tax increase from \$42 per employee to \$420 per employee. These estimates are not reflected in the amounts listed in Line 7 above. Additionally, since there are no limits to the extent to which overpayments would have to be forgiven for administrative error, the agency could be required to increase tax rates in order to replenish the trust fund depending on the size of the liability.

Under current practice, VEC does not release payments to claimants until they have earned at least one week of benefits and established a continued claim series, not at the onset of an initial claim as established in the bill. When the question of eligibility affects only past weeks, presumptive pay must be issued immediately, regardless of the issue type. When the question of eligibility affects future weeks, payment is not made until a determination is issued.

Under current practice, VEC must inform individuals who receive payments under a pending eligibility issue that the pending eligibility issue may affect their entitlement to the payment(s) and may result in an overpayment that will require repayment of the amount overpaid. There is no waiver of benefit overpayments.

According to VEC, their available data does not delineate overpayments due to administrative error versus those due to claimant error or amounts recouped due to fraud. The estimated maximum costs are based on the ratio of overpayments and fraud costs in relation to the amount of benefits paid in a year, therefore, the actual amounts may be less.

The first year is significantly higher than subsequent years based on the volume of claims due to the COVID-19 pandemic. During FY2020, VEC had 1.4 million claims. VEC anticipates a potentially higher number of claims in FY2021. In previous years, VEC had 253,030 claims in FY2014; 210,080 claims in FY2015; 198,912 claims in FY2016, 168,028 claims in FY2017; 144,166 claims in FY2018, and 135,064 claims in FY2019.

It is anticipated that a legislative appropriation for additional Trust Fund appropriation is not necessary, however, VEC anticipates the need for \$250,000, from the general fund, to support five deputies or hearing officers to hold the additional hearings that will be necessary to determine eligibility for overpayment forgiveness. While VEC receives federal administrative funds, these funds are supporting the additional workload and service requirements resulting from the pandemic.

9. Specific Agency or Political Subdivisions Affected: Virginia Employment Commission.

10. Technical Amendment Necessary: No.

11. Other Comments: HB1977 provides that if an individual receives an overpayment of state unemployment benefits, and the overpayment occurred due to administrative error, the individual shall not be liable to repay such sum to the Virginia Employment Commission (VEC). These provisions shall not apply to an unemployment benefit program of the United States or of any other state.