

Department of Planning and Budget

2021 Special Session I Fiscal Impact Statement

1. Bill Number: HB2040

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

2. Patron: Hudson

3. Committee: Passed Both Houses

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

- 5. Summary:** Provides that if a claimant has had a determination of initial eligibility for benefits under this chapter, as evidenced by the issuance of compensation or waiting-week credit, payments shall continue, subject to a presumption of continued eligibility and in accordance with the terms of this subsection, until a determination is made that provides the claimant notice and an opportunity to be heard. When a question concerning continued eligibility for benefits arises, a determination shall be made as to whether it affects future weeks of benefits or only past weeks. With respect to future weeks, presumptive payment shall not be made until but no later than the end of the week following the week in which such issue arises, regardless of the type of issue. With respect to past weeks, presumptive payment shall be issued immediately, regardless of the type of issue. Notice shall be given to individuals who receive payments under such presumption that pending eligibility may affect their entitlement to the payment and may result in an overpayment that requires repayment.

The Commission shall waive the requirement to repay the overpayment, after an individual case review, if (i) the overpayment was made without fault on the part of the individual and (ii) requiring repayment would be contrary to equity and good conscience. An overpayment made "without fault on the part of the individual" shall include overpayments that (i) result from administrative error; (ii) are the result of inducement, solicitation, or coercion on the part of the employer; or (iii) result from the employer's failure to respond timely or adequately to the Commission's request for information, as required by § 60.2-528.1. An overpayment shall not be considered "without fault on the part of the individual" if such overpayment was the result of (a) a reversal in the appeals process, unless the employer failed to respond timely or adequately to the Commission's request for information regarding the individual's separation from employment; (b) a programming, technological, or automated system error not directly associated with an individual claim that results in erroneous payments to a group of individuals; or (c) fraud. It shall be contrary to equity and good conscience if requiring repayment of an overpayment would deprive the individual of the income required to provide for basic necessities, including shelter, food, medicine, child care, or any other essential living expenses. Overpayments where the obligation to repay has not been waived may be collectible by civil action in the name of the Commission. No determination with respect to benefit overpayments shall be issued until after a determination

or decision that finds a claimant ineligible or disqualified for benefits previously paid has become final.

The Commission shall notify each person with an unpaid overpayment of benefits established for claim weeks paid commencing March 15, 2020, under Chapter 6 (§ 60.2-600 et seq.) of Title 60.2 of the Code of Virginia, or under an unemployment benefit program of the United States or any other state, that such individual may be entitled to a waiver of obligation to repay such overpayment and shall provide 30 days from the date of such notification for the individual to request a waiver of repayment. For good cause shown, the Commission may extend the 30-day period for requesting a waiver. The Commission shall conduct an individualized review and adjudicate any request received in accordance with the provisions of § 60.2-619 of the Code of Virginia, as amended by this act, and any individual who is denied a waiver shall have the right to appeal as provided in subsection D of § 60.2-619 of the Code of Virginia, as amended by the bill. In ruling on any waiver request, the Commission shall apply the provisions of Title 60.2 or, if applicable, the overpayment waiver provisions of any unemployment compensation program of the United States.

The provisions of the bill that allow the waiver of any obligation to repay overpayments established for the week commencing March 15, 2020, through the week commencing June 26, 2021, shall apply only to overpayment balances that remain outstanding as of July 1, 2021. Amounts already paid or collected against such overpayments shall not be reimbursed to the claimant, except for benefits paid under the Pandemic Unemployment Assistance program.

That notwithstanding any provision to the contrary, the Commission may suspend or forgo referring any overpayment established since March 15, 2020, to the collections process established under § 2.2-4806 of the Code of Virginia. However, the authority to suspend or forgo such referrals shall expire on July 1, 2022.

The fifth enactment clause of the bill provides, “That all costs to the Unemployment Compensation Fund (the Fund) resulting from the provisions of this act for overpayments of benefits under Chapter 6 (§ 60.2-600 et seq.) of Title 142 60.2 of the Code of Virginia shall be reimbursed to the Fund from the general fund in the general appropriation act. For an overpayment waived pursuant to this act, no employer shall be responsible for (i) reimbursing benefits or (ii) benefits charges, except as provided in § 60.2-528.1 145 of the Code of Virginia.”

The provisions of the bill will expire on July 1, 2022.

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

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

7a. Expenditure Impact: Trust Fund See Item 8, below.

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2021	\$0	n/a
2022	\$18,723,959	GF

7b. Expenditure Impact: Operational Costs See Item 8, below.

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2021	\$0	0	n/a
2022	\$250,000	5	GF

- 8. Fiscal Implications:** According to the Virginia Employment Commission (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 which is 1.92 percent. Previously produced benefit projections are then multiplied by the benefit projections times 1.92 percent, as reflected in the first table.

While the bill will take effect in July 2021, the bill's provisions would apply to overpayments as far back as March 2020. FY 2022 also includes COVID overpayments which are higher than an average year. Expenditures from the Trust Fund, as reflected in the first table, will not affect base tax rates.

VEC calculated the operational costs reflected in the second table by estimating the total number of overpayment cases that would require a hearing. VEC calculated the number of cases a deputy could complete in a month and determined the number of deputies needed to complete the work.

The cost was determined by multiplying the number of deputies per month against an average monthly deputy salary. VEC anticipates the need for \$250,000 in FY 2022 to support five deputies or hearing officers. The costs to support five deputies or hearing officers must be paid from the general fund. While VEC receives federal administrative funds, these funds are supporting the additional workload and service requirements resulting from the pandemic and may not be used for the purpose of this bill.

The fifth enactment of the bill provides for the reimbursement from the general fund of the costs to the Unemployment Compensation Fund resulting from the provisions of this bill for overpayments of benefits under Chapter 6 (§ [60.2-600](#) et seq.) of Title 60.2 of the Code of Virginia. This will require an additional general fund appropriation estimated at \$18.7 million in FY 2022.

The Conference Report to HB1800/SB1100 includes provides \$18.97 million in the second year from the general fund and five positions to support costs for the Virginia Employment Commission to forgive the overpayment of benefits under certain conditions pursuant to this bill. Of this sum, \$18.7 million is provided for the reimbursement provisions of the bill and \$250,000 is for the Commission's administrative costs.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia Employment Commission; state agencies.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** None.