

Department of Planning and Budget 2010 Fiscal Impact Statement

1. Bill Number: HB252

House of Origin X Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Merricks

3. Committee: Commerce and Labor

4. Title: **Waiver of overpayment of unemployment benefits due to administrative error.**

5. Summary: This bill requires the Virginia Employment Commission (VEC) to waive an individual's obligation to repay overpayments of unemployment compensation benefits if (i) the individual requests a waiver, (ii) the overpayment occurred solely because of an administrative error by the VEC, (iii) repayment was not demanded within the six months following the date of the overpayment, and (iv) requiring the individual to repay the overpayment would be inequitable. If the four criteria for a mandatory waiver are not satisfied, the VEC is provided the option of waiving all or part of an individual's obligation to repay overpayments of unemployment compensation benefits if the overpayment occurred solely or partially due to an administrative error by the VEC (and in no part due to the individual's false representation or failure to disclose a material fact) and the VEC determines that recovery of all or part of the overpayment would be inequitable. In determining whether requiring the individual to repay an overpayment would be inequitable, the VEC shall consider whether repayment would cause economic hardship to the individual.

6. Fiscal Impact Estimates: Indeterminate, see item 8.

7. Budget Amendment Necessary: No.

8. Fiscal Implications: This bill requires the VEC to waive any repayment due for overpayment of benefits if the overpayment occurred solely or partially due to administrative error by the VEC.

Currently, the VEC is required to attempt collection on all benefit overpayments, regardless of the reason for the overpayment. Payment is to be collected by way of a dollar-for-dollar offset against any future benefit entitlements if the claimant who was overpaid is, or later becomes, eligible for future benefits. In a situation where an overpayment is due to an administrative error by the VEC, the statute limits the amount of the offset to 50 percent of the claimant's weekly benefit amount.

Over time, by waiving administrative error overpayments that are currently accounted for, could reduce the balance in the Unemployment Insurance Trust Fund and ultimately contribute to higher employer taxes to meet required fund balances.

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

10. Technical Amendment Necessary: The changes to lines 68-69 are unnecessary. Currently, if a claimant is overpaid benefits, any charges that were assessed against the liable employer's tax account are automatically removed. This language is redundant.

Also, the bill's determination of the "date of the overpayment" is ambiguous, clarification may be needed.

11. Other Comments: This bill does not take into consideration time necessary for the administrative appeal process and judicial review. On lines 100-101 of the bill, the claimant must request a waiver within 30 days of being notified that the VEC has determined that he is overpaid; but on lines 103-104, the VEC is required to demand payment within six months of the "date of the overpayment." These provisions fail to account for the administrative appeal process and the potential for judicial review. Under existing law, when the VEC issues any benefit determination, including one that holds a claimant overpaid, the aggrieved party has 30 days to file an appeal. There are two levels of appeal within the VEC, each with a 30-day appeal period. The VEC's final decision can be appealed to circuit court. According to the VEC, unless a claimant requested waiver at the same time he filed an appeal from the overpayment determination, he would rarely be able to meet this requirement.

HB550 and HJ49 also deal with the overpayment of unemployment benefits.

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