

Department of Planning and Budget 2021 Fiscal Impact Statement

1. **Bill Number:** HB1977

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

2. **Patron:** Askew

3. **Committee:** Labor and Commerce

4. **Title:** Unemployment compensation; overpayments due to administrative error

5. **Summary:** Provides that if an individual receives an overpayment of unemployment benefits under the state program that occurred due to an administrative error, the individual shall not be liable to repay such sum to the Commission. Administrative error shall not include decisions reversed in the appeals process.

6. **Budget Amendment Necessary:** Yes. Item 131.

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

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2021	0	n/a
2022	\$18.7 million \$250,000	Trust Fund GF
2023	\$6.3 million \$250,000	Trust Fund GF
2024	\$6.4 million \$250,000	Trust Fund GF
2025	\$6.4 million \$250,000	Trust Fund GF
2026	\$6.4 million \$250,00	Trust Fund GF
2027	\$6.4 million \$250,00	Trust Fund GF

8. **Fiscal Implications:** This bill 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.

VEC's current practice is that there is no waiver of benefit overpayments. 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 determined that this bill does not conform to federal law because it 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 recovery of an overpayment due to agency error. As a result, the Commonwealth is at risk of losing its \$35.0 million federal administrative grant for the unemployment insurance program.

Further, Virginia businesses are at risk of losing their 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.

According to VEC, the 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 costs 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: HB 2040 provides that an individual who receives an overpayment of unemployment benefits is not liable to repay the overpayments to the Virginia Employment Commission (VEC) if VEC 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.