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:** Appropriations

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.

   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. For purposes of this section, 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. For any overpayment where repayment is not forgiven, the Commission shall have the authority to negotiate the terms of repayment

An overpayment shall not be considered "without fault" if such overpayment was the result of (1) a reversal in the appeals process, unless the employer failed to respond or failed to timely respond to the Commission's request for information regarding the individual's separation from employment, or (2) a programming, technological, or automated system error, not directly associated with an individual claim, that results in erroneous payments to a group of individuals. 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 is enacted to notify each person with an unpaid overpayment of benefits established for claim weeks paid commencing March 15, 2020, 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 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, as amended by this bill, and any individual who is denied a waiver shall have the right to appeal, as amended by this 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 bill includes an enactment that 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 overpayments that have not been fully or partially repaid. Additionally, that notwithstanding any provision to the contrary, the Commission may, in its discretion, suspend or forego referring any overpayment established since March 15, 2020, to the collections process established under § 2.2-4806, Code of Virginia. However, the authority to suspend or forego such referrals shall expire on June 30, 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**

Fiscal Year	***Dollars***	***Fund***
2021	$0	n/a
2022	$18,723,959	Unemployment Insurance Trust Fund
2023	$6,382,261	Unemployment Insurance Trust Fund
2024	$6,386,093	Unemployment Insurance Trust Fund
2025	$6,382,261	Unemployment Insurance Trust Fund
2026	$6,389,925	Unemployment Insurance Trust Fund
2027	$6,340,108	Unemployment Insurance Trust Fund

7b. Expenditure Impact: Operational Costs

Fiscal Year	*Dollars*	*Positions*	*Fund*
2021	$0	0	n/a
2022	$250,000	5	GF
2023	$250,000	5	GF
2024	$250,000	5	GF
2025	$250,000	5	GF
2026	$250,000	5	GF
2027	$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. The expenditure for FY 2022 is significantly higher than other years because 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 and ongoing to support five deputies or hearing officers.

   State agencies are reimbursable employers and do not pay unemployment insurance taxes. When state agencies are liable for unemployment insurance benefits, they must reimburse VEC dollar for dollar for any benefits paid on a claim for which they have liability.

   It is anticipated that a legislative appropriation for additional Trust Fund appropriation is not necessary, however, VEC anticipates the need for $250,000 in FY 2022 and ongoing 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; state agencies.

10. **Technical Amendment Necessary:** No.

11. **Other Comments:** None.