

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE DRS45003-RBz-2A* (11/21)

Short Title: DES Board of Review.

(Public)

Sponsors: Senators Rucho (Primary Sponsor); B. Jackson and Tucker.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO RATIFY PAST UNEMPLOYMENT INSURANCE APPEALS DECISIONS, TO
3 AMEND THE APPOINTMENT PROCESS FOR THE BOARD OF REVIEW, AND TO
4 CREATE STAGGERED TERMS FOR MEMBERS OF THE BOARD OF REVIEW, AS
5 RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON
6 UNEMPLOYMENT INSURANCE.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. RATIFY APPEALS DECISIONS**

10 **SECTION 1.(a)** The following decisions in an appeal by a party to a decision of an
11 appeals referee or hearing officer under Chapter 96 of the General Statutes are hereby validated
12 and given the same legal effect as if those decisions had been issued by the Board of Review
13 (BOR):

- 14 (1) Decisions issued by the Assistant Secretary of Commerce for the Division of
15 Employment Security or by the Secretary of Commerce's designee.
16 (2) Decisions issued by the three individuals appointed by the Governor in
17 December 2013 to serve as members of the BOR.

18 **SECTION 1.(b)** This section is effective when it becomes law and applies to
19 decisions rendered on or after November 1, 2011.
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21 **PART II. EXPOUND UPON THE APPOINTMENT PROCESS FOR THE BOARD OF**
22 **REVIEW**

23 **SECTION 2.(a)** G.S. 96-4(b) and Section 21 of S.L. 2013-224 are repealed.

24 **SECTION 2.(b)** Article 2D of Chapter 96 of the General Statutes is amended by
25 adding a new section to read:

26 "**§ 96-15.3. Board of Review.**

27 (a) Purpose. – The Board of Review (BOR) is created to determine appeals policies and
28 procedures and to hear appeals arising from the decisions and determinations of the Division.
29 The Department of Commerce must assign staff to the BOR. The BOR and its staff must
30 perform their job responsibilities independent of the Governor, the General Assembly, the
31 Department, and the Division and in accordance with any written guidance promulgated and
32 issued by the U.S. Department of Labor.

33 (b) Members. – The BOR consists of three members appointed by the Governor and
34 subject to confirmation by the General Assembly as provided in subsection (c) of this section.
35 One member must be classified as representative of employees, one member must be classified



1 as representative of employers, and one member must be classified as representative of the
2 general public. The member appointed to represent the general public will serve as chair of the
3 BOR and must be a licensed attorney in this State.

4 Members of the BOR serve staggered four-year terms. A term begins on July 1 of the year
5 of appointment and ends on June 30 of the fourth year. No individual may serve more than two
6 terms on the BOR. In calculating the number of terms served, a partial term that is less than 24
7 months in length will not be included. The General Assembly must set the annual salaries of
8 the BOR in the current Operations Appropriations Act.

9 (c) Confirmation. – Appointments of members to serve on the BOR are subject to
10 confirmation by the General Assembly by joint resolution. The Governor must submit the name
11 of the individual nominated for appointed to the BOR by the Governor to the General
12 Assembly for confirmation on or before May 1 of the year of the expiration of the term. If the
13 General Assembly does not confirm the appointment by May 30, the office will be considered
14 vacant and must be filled in accordance with subsection (d) of this section. The Governor may
15 not resubmit the name of the nominee whom the General Assembly did not confirm for the
16 office. If the Governor fails to timely submit a nomination, the General Assembly will appoint
17 to fill the succeeding term as provided in subsection (e) of this section.

18 (d) Vacancies. – For the purpose of this subsection, the General Assembly is not in
19 session only (i) prior to convening of the regular session, (ii) during any adjournment of the
20 regular session for more than 10 days, and (iii) after sine die adjournment of the regular
21 session. A vacancy in an office of the BOR prior to the expiration of the term of office must be
22 filled in accordance with this subsection:

23 (1) During legislative session. – If a vacancy in an office arises or exists when
24 the General Assembly is in session, the Governor must submit the name of
25 the individual to be appointed to fill the vacancy for the remainder of the
26 unexpired term within 30 days after the vacancy arises to the General
27 Assembly for confirmation by the General Assembly. If the General
28 Assembly does not confirm the appointment within 30 days after the General
29 Assembly receives the nomination, the office will be considered vacant and
30 must be filled in accordance with this subsection. The Governor may not
31 resubmit the name of the nominee whom the General Assembly did not
32 confirm for the vacancy. If the Governor fails to timely submit a nomination,
33 the General Assembly will appoint to fill the vacancy as provided in
34 subsection (e) of this section.

35 (2) During legislative interim. – If a vacancy in an office arises or exists when
36 the General Assembly is not in session, the Governor must appoint an
37 individual to that office to serve on an interim basis pending confirmation by
38 the General Assembly. The Governor must submit the name of the
39 individual to be appointed to fill the vacancy for the remainder of the
40 unexpired term to the General Assembly for confirmation within 14 days of
41 the date the General Assembly convenes or reconvenes for the next regular
42 session. If the Governor fails to timely submit a nomination, the General
43 Assembly will appoint to fill the vacancy as provided in subsection (e) of
44 this section.

45 (e) Legislative Appointments. – If the Governor fails to timely submit the name of an
46 individual to be appointed to the BOR as provided in this section, then the General Assembly
47 may appoint an individual to fill the vacancy in accordance with G.S. 120-121 and the
48 provisions of this subsection. If the vacancy occurs in an odd-numbered year, the appointment
49 is made upon the recommendation of the President Pro Tempore of the Senate. If the vacancy
50 occurs in an even-numbered year, the appointment is made upon the recommendation of the
51 Speaker of the House of Representatives."

PART III. CREATE STAGGERED TERMS FOR THE BOARD OF REVIEW

SECTION 3. To achieve the staggered terms for the members of the Board of Review (BOR) in accordance with G.S. 96-15.3, as enacted by this act, and notwithstanding the appointment provisions in G.S. 96-4(b), as repealed by this act, the terms for current BOR members will expire as follows:

- (1) The term of the member serving on the BOR that represents employers expires June 30, 2015.
- (2) The term of the member serving on the BOR that represents employees expires June 30, 2016.
- (3) The term of the member serving on the BOR that represents the general public expires June 30, 2017.

PART IV. ENSURE INDEPENDENCE OF BOARD OF REVIEW AND ITS STAFF

SECTION 4. By May 1, 2015, the Secretary of Commerce and the Chair of the Board of Review (BOR) shall jointly make a detailed written report to the Chairs of the Joint Legislative Oversight Committee on Unemployment Insurance, the Chairs of the Senate Appropriations Committee on Natural and Economic Resources, the Chairs of the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division on all of the following:

- (1) Measures taken to ensure the independence of BOR staff regarding higher level appeals in accordance with State law and federal guidelines.
- (2) The number, types, and classifications of positions (including coverage under the State Human Resources Act) assigned to BOR staff.
- (3) For each BOR staff member, the percentage of duties that involve work only for the BOR and the nature of duties performed.
- (4) For each BOR staff member, the percentage of duties that do not involve the work of the BOR and the nature of duties performed.
- (5) Whether or not adequate staff is assigned to the BOR. If there is not adequate staffing, determine what additional resources are required to achieve adequate staffing.

PART V. EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.