

**FINAL REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

**THE FUNDING REQUIREMENTS  
OF THE VIRGINIA  
UNEMPLOYMENT TRUST FUND**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 38**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1998**

## **MEMBERS OF THE JOINT SUBCOMMITTEE**

Sen. Jackson E. Reasor, Jr., Chairman  
Del. Glenn R. Croshaw, Vice Chairman  
Sen. Joseph B. Benedetti  
Sen. John H. Chichester  
Sen. Richard J. Holland  
Sen. Yvonne B. Miller  
Del. Robert D. Hull  
Del. Dwight C. Jones  
Del. Jerrauld C. Jones  
Del. Robert E. Nelms

## **STAFF**

### **DIVISION OF LEGISLATIVE SERVICES - Legal and Research**

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### **SENATE OF VIRGINIA - Administrative and Clerical**

Thomas C. Gilman, Coordinator, Committee Operations  
Crystal S. Webb, Committee Clerk

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**Final Report of the Joint Subcommittee  
Studying the Funding Requirements of the  
Virginia Unemployment Trust Fund  
to  
The Governor and the  
General Assembly of Virginia  
Richmond, Virginia  
1998**

TO: The Honorable James S. Gilmore, III, Governor,  
and  
the General Assembly of Virginia

## **I. Introduction**

Originally established by SJR 133 in 1977, the Joint Subcommittee Studying the Funding Requirements of the Virginia Unemployment Compensation Act ("the Act") was continued for another two years in 1996 by SJR 29 (Appendix A). As an ongoing function, the subcommittee hears the Virginia Employment Commission's (VEC) annual briefing on the Unemployment Trust Fund's current and projected adequacy. In addition, the subcommittee reviews and recommends major revisions to the Act, as proposed from time to time by the VEC, business, and organized labor representatives.

The following General Assembly members were appointed to the joint subcommittee: Senators Reasor from Bluefield, Benedetti from Richmond, Chichester from Fredericksburg, R.J. Holland from Windsor, and Y. B. Miller from Norfolk, together with Delegates Croshaw from Virginia Beach, Hull from Falls Church, D. C. Jones from Richmond, J. C. Jones from Norfolk, and Nelms from Suffolk. Senator Reasor and Delegate Croshaw served as chairman and vice chairman, respectively.

The joint subcommittee met in Richmond on October 9, 1997, to receive the VEC's trust fund briefing, presented by VEC Commissioner Dr. Thomas J. Towberman. The subcommittee also considered and recommended a proposal to study in further detail the subject matter contained in SJR 380 (1997) and adopted legislative recommendations for the 1998 session of the General Assembly.

## II. Overview of the Program

*The Federal-State Unemployment Insurance System.* The Federal Unemployment Insurance Tax Act (FUTA) was a core component of federal New Deal legislation passed during the 1930s. FUTA established a federally mandated, state-administered program providing temporary financial relief to working Americans involuntarily unemployed.

In Virginia, qualifying employees who become unemployed through no fault of their own are entitled to weekly benefits prescribed by state law. To qualify, Virginia employees must have earned at least \$3,000 in total wages in two of the last four calendar quarters immediately preceding the quarter in which they became unemployed. At this minimum-qualifying level, such employees would receive a weekly benefit amount of \$60; the maximum weekly benefit is \$226.

*Virginia Program Administration.* The Virginia Employment Commission administers the Commonwealth's unemployment insurance program. Title 60.2 of the Code of Virginia prescribes the VEC's duties, which include (i) collecting taxes to fund the program; (ii) processing and paying benefit claims; (iii) providing administrative adjudication of contested claims; (iv) ensuring that the Unemployment Trust Fund is adequately funded; (v) operating a job service program; (vi) providing employment and unemployment statistics; and (vii) implementing the federal Job Training Partnership Act.

The VEC's administrative costs are paid from FUTA payroll taxes collected from Virginia employers by the Internal Revenue Service. These moneys are deposited in the Employment Security Administrative Account (ESAA) for appropriation by Congress and allocation by the U.S. Department of Labor (DOL). The VEC administrative funding level is based upon DOL's estimate of VEC's administrative expenses. Presently, the Commonwealth receives back from the federal government approximately 39 percent of the amount contributed to the account.

*Unemployment taxes and benefit payments.* Unemployment compensation benefits are paid from a trust fund comprised of taxes collected by the VEC from Virginia employers. It is used solely for paying unemployment compensation benefits to unemployed Virginians. Virginia employers with one or more employees pay trust fund taxes on employee wages up to \$8,000. The taxes are "experience rated," i.e., those employers with higher levels of qualifying claims will pay higher tax rates. The minimum tax rate for Virginia's employers is 0.1 percent; the maximum is 6.2 percent. New employers, i.e., those without sufficient experience, are initially charged a tax rate of 2.5 percent.

Employers are also charged a "pool tax" to cover benefits paid out from the trust fund that cannot be charged to specific employers. Pool costs include (i) benefit payments made to employees of employers no longer in business and (ii) coverage of benefit payment costs that cannot be recovered from maximum-rated employers to whom they are attributable because of

the 6.2 percent cap. In recent years, pool costs constituted 20 to 50 percent of total benefits. If the trust fund adequacy level is at 50 percent or more, however, pool taxes are offset by interest earned on the trust fund. The trust fund is also supplemented by a 0.2 percent "fund-building" tax whenever the fund's adequacy level drops below 50 percent.

### **III. VEC Briefing**

A presentation by Commissioner Towberman to the joint subcommittee on October 9, 1997, highlighted an overall improvement in the Commonwealth's key unemployment statistics from 1996 to 1997 (Appendix B). The subcommittee learned that the Commonwealth was experiencing unemployment rates during 1997 below the same-month 1996 rates. In terms of the trust fund balance factor, the panel was advised that the projected solvency level of the trust fund was 130.9 percent of adequacy. This figure represents a 40 percentage point increase over 1996's level. The VEC expects the fund balance to increase by about \$62 million by the end of 1997.

Data comparing 1996 and 1997 revealed that:

- Unemployment rates in 1997 have been below the same-month 1996 rates.
- Final payments to claimants in the first eight months of 1997 have been below the 1996 levels.
- Projected overall benefit payouts will be lower in 1997 than in 1996.

Trust fund figures also showed improvement in 1997. The VEC is required to make a trust fund adequacy calculation each July 1, pursuant to § 60.2-533. A statutory formula is used to calculate how much money the trust fund would need to pay unemployment compensation benefits for a 16.5-month period if (i) benefit payments were at the highest levels recorded during the past 20 years and (ii) the trust fund received no income during this interval.

The VEC reported a June 30, 1997, trust fund adequacy level of 130.9 percent, an increase from the 1996 level of 90.7 percent, and from 1995's of 79.3 percent. The January 1, 1997, trust fund balance was \$877.2 million, up from \$769 million on January 1, 1996. Trust fund data also revealed that:

- Tax revenue declined in 1997 due to reduced tax rates.
- Interest revenue increased due to higher trust fund balances and higher interest rates paid by the U. S. Treasury.
- Benefit payments continued to decline from their recession peak with an improvement in employment levels.

Responding to a request from the joint subcommittee, the VEC also provided the panel with information regarding the claimants for unemployment compensation qualified for benefits. Through February 10, 1998, 1356 claimants were eligible for unemployment benefits as a result of the 1997 legislation lowering the minimum earnings requirements. (Appendix C).

## **IV. Legislative Proposals**

### **A. Senate Joint Resolution 380 (1997).**

The joint subcommittee heard testimony concerning SJR 380, introduced during the 1997 session, by the bill's patron, Senator Stephen Newman (Appendix D). This resolution directed the joint subcommittee to study the current criteria whereby an employer's experience rating is "charged" for unemployment benefits paid to a former employee. The Unemployment Compensation Act presently holds an employer responsible for benefit charges after an employee has worked for that employer for 30 days. SJR 380 directed the joint subcommittee to consider the implications of increasing the time period before an employer's experience rating is influenced by a former employee receiving unemployment benefits. The joint subcommittee agreed unanimously to study this issue in greater detail during 1998.

### **B. Senate Joint Resolution 77/ Senate Bill 363 (1998).**

The joint subcommittee recommended unanimously to prepare and introduce legislation during the 1998 session of the General Assembly to continue the ongoing study of the funding requirements of the unemployment trust fund. The General Assembly approved Senate Joint Resolution 77 (Appendix E), continuing the study for another year. While the General Assembly also approved Senate Bill 363 (Appendix F), creating a permanent legislative commission to oversee the funding requirements of the unemployment trust fund, Governor Gilmore vetoed this legislation.

## **V. Conclusion**

The 1998 Session of the General Assembly did not pass any significant legislation impacting the Unemployment Trust Fund balance. However, the House committee on Labor and Commerce did consider House Bill 776 (Appendix G) and voted to carry this proposed legislation over until the 1999 session so the joint subcommittee can study the potential impact of this bill on the trust fund. House Bill 776 would conform the definition of "employment" within the Virginia Unemployment Compensation Act to that contained within the Federal Unemployment Tax Act.

The joint subcommittee will consider and evaluate these referred legislative measures and their impact on the trust fund balance as it continues its work in 1998.



Respectfully submitted,

Sen. Jackson E. Reasor, Jr., Chairman  
Del. Glenn R. Croshaw, Vice Chairman  
Sen. Joseph B. Benedetti  
Sen. John H. Chichester  
Sen. Richard J. Holland  
Sen. Yvonne B. Miller  
Del. Robert D. Hull  
Del. Dwight C. Jones  
Del. Jerrauld C. Jones  
Del. Robert E. Nelms

**SENATE JOINT RESOLUTION NO. 29**

*Continuing the Joint Subcommittee Studying the Funding Requirements of the Virginia Unemployment Compensation Act.*

Agreed to by the Senate, February 9, 1996  
Agreed to by the House of Delegates, February 29, 1996

WHEREAS, a joint subcommittee to study the funding requirements of the Virginia Unemployment Compensation Act traditionally has met annually; and

WHEREAS, such joint subcommittee met in 1995 pursuant to Senate Joint Resolution No. 272 to review the current status and long-term projections for the unemployment compensation trust fund; and

WHEREAS, the trust fund is financed by Virginia's employers and drawn on by working Virginians who become unemployed and must rely on such fund for unemployment compensation benefits; and

WHEREAS, continued legislative oversight of such fund is warranted to ensure its adequacy to meet current and projected benefit payments; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Subcommittee Studying the Funding Requirements of the Virginia Unemployment Compensation Act be continued. The joint subcommittee's membership shall remain the same, with any vacancies to be filled by the Senate Committee on Privileges and Elections and the Speaker of the House, as appropriate.


The direct costs of this study shall not exceed \$6,000.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1998 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

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 [Go to \(General Assembly Home\)](#)



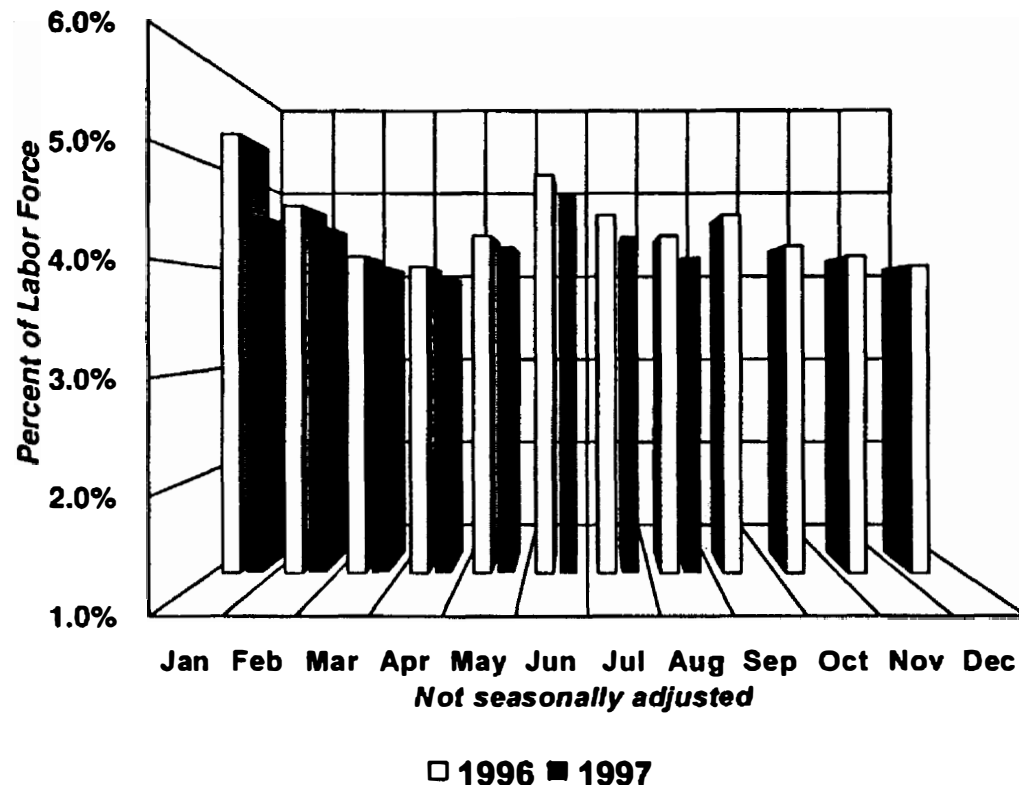
# **Trust Fund Overview**

*Dr. Thomas J. Towberman,  
Commissioner*

*October 1997*

# Virginia's Unemployment Rate 1996 vs. 1997

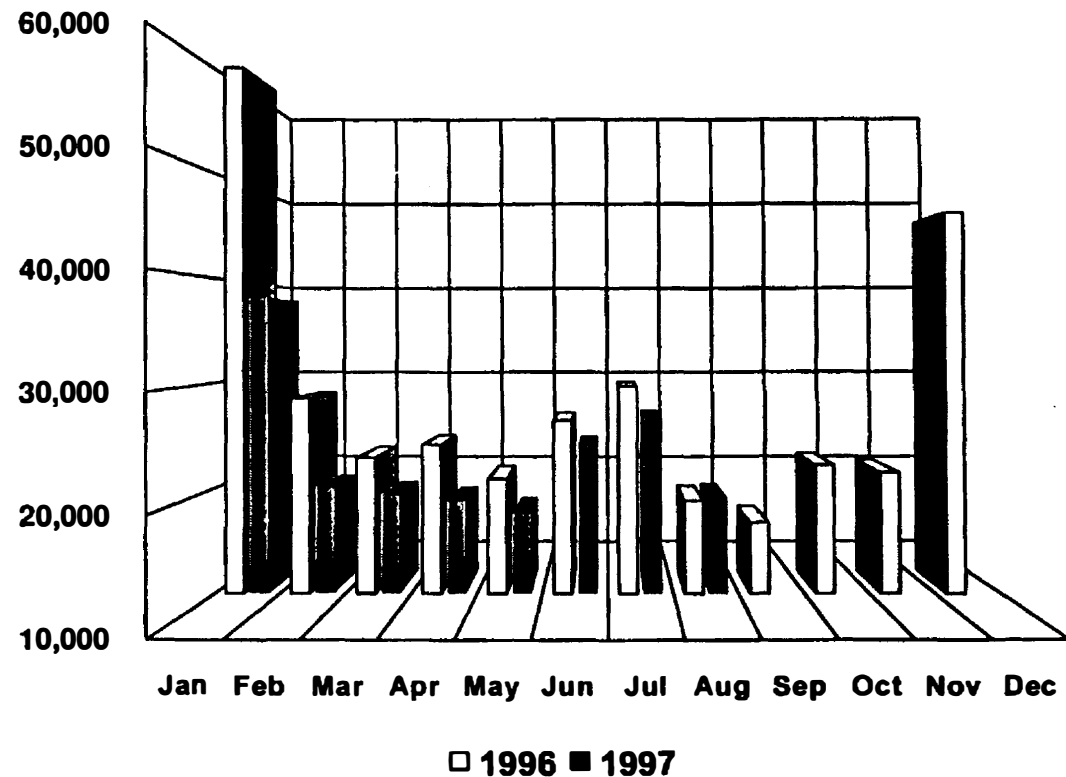
- Unemployment rates in 1997 have been below the same-month 1996 rates.
- Higher unemployment is present in Southwest, Southside, Northern Neck, Eastern Shore, and older urban areas.



# U.I. Initial Claims

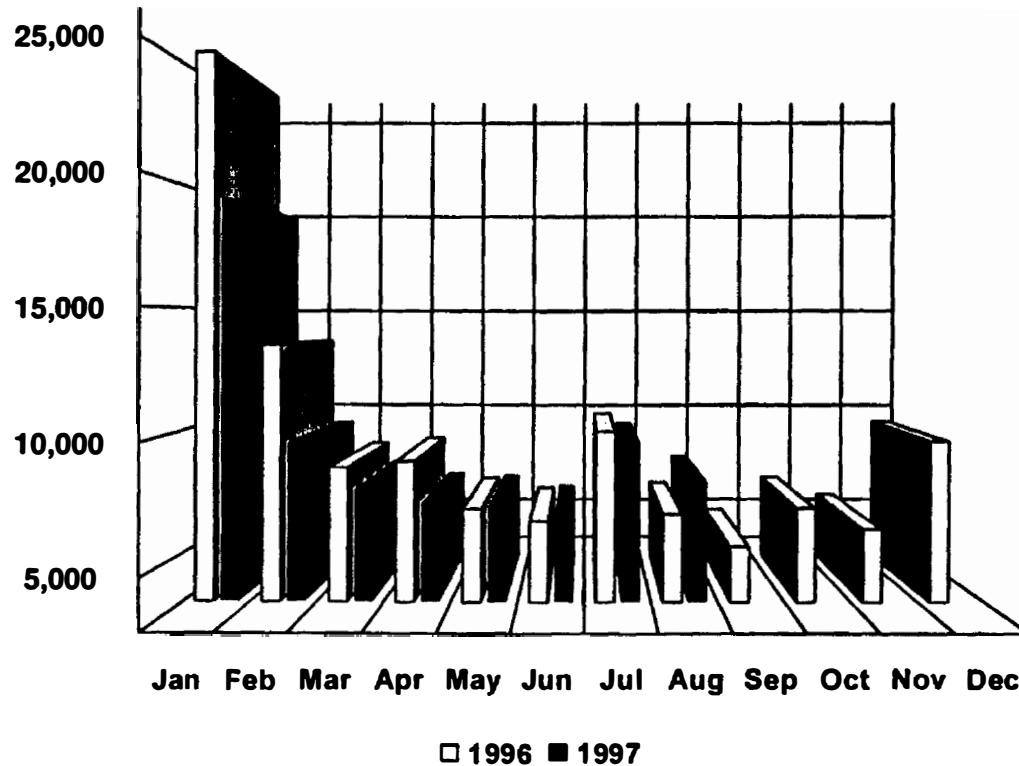
## 1996 vs. 1997

- Total initial claims this year are below 1996 for two reasons:
  - better economy (more jobs in services, trade, and construction)
  - better weather
- Average duration of unemployment since January 1997 has been 10.5 weeks.



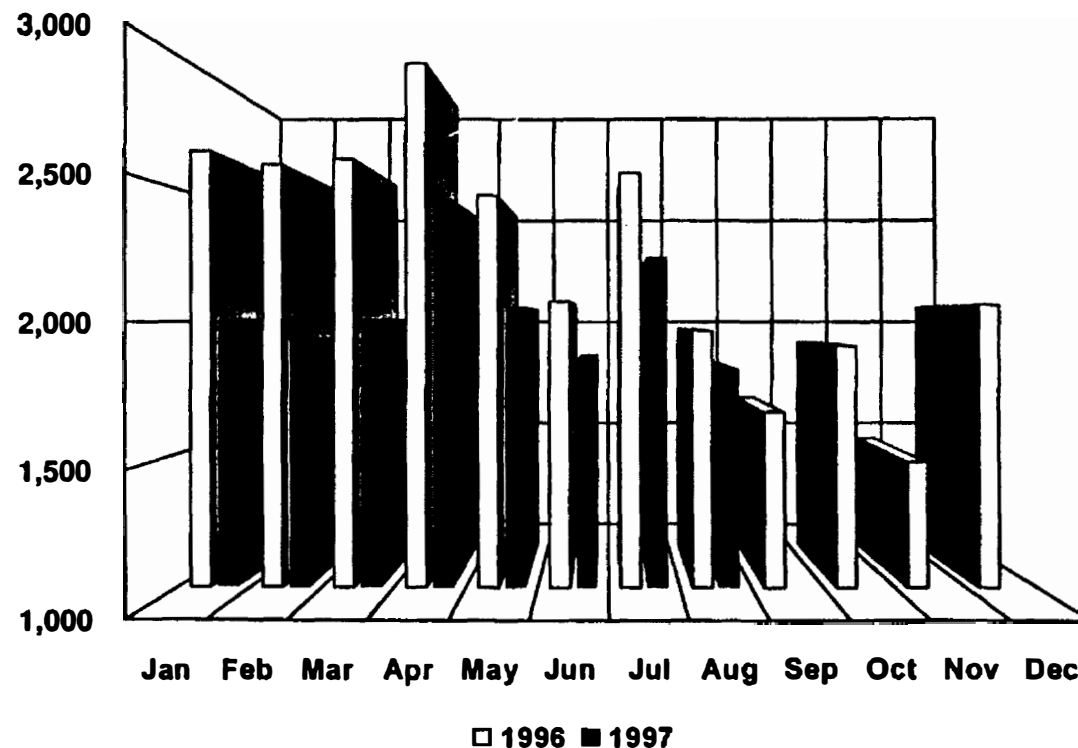
# U.I. First Payments 1996 vs. 1997

- A claimant can receive only one First Payment in his benefit year; so, First Payments are a good proxy for the number of claimants receiving unemployment benefits.
- First payments are down 13.2% from last year.



# U.I. Final Payments 1996 vs. 1997

- Final Payments were down at the beginning of the year as good weather allowed claimants to return to work.
- For the first eight months, Final Payments are down 17.6% from 1996 to 1997.
- The exhaustion rate this year has been about 21.4%.



# **U.I. Benefits**

- Benefits are paid to workers unemployed through no fault of their own.
- Benefit levels set by the General Assembly:
  - minimum weekly benefit \$60 (July 1997)
  - maximum weekly benefit \$226 (July 1997)
- Benefits determined by earnings in first 4 of last 5 completed calendar quarters. This is called the Base Period.
- Otherwise eligible claimants are not paid for first week of unemployment. This is called the Waiting Week.



# **Legislative Update: Benefits**

- Approximately 420 new claimants were monetarily eligible since lower earnings requirement became effective on July 1, 1997.
- About 6,300 claimants will be added when minimum qualifying earnings drop to \$2,500 in 1999.

# Legislative Update: Benefits

<i>Year</i>	<i>Maximum</i>	<i>Minimum</i>	<i>Minimum Qualifying Earnings</i>
<b>1996</b>	<b>\$224</b>	<b>\$65</b>	<b>\$3,250</b>
<b>1997</b>	<b>\$226</b>	<b>\$60</b>	<b>\$3,000</b>
<b>1998</b>	<b>\$228</b>	<b>\$55</b>	<b>\$2,750</b>
<b>1999</b>	<b>\$230</b>	<b>\$50</b>	<b>\$2,500</b>
<b>2000</b>	<b>\$232</b>	<b>\$50</b>	<b>\$2,500</b>

# U.I. Taxes

- Taxes are paid by employers to the VEC on first \$8,000 of each employee's wages.
- Tax rates are set by General Assembly:
  - minimum tax 0.0% or \$0 per employee (July 1997)
  - maximum tax 5.4% or \$432 per employee (July 1997)
- Individual employer's tax rate determined by:
  - Trust Fund solvency level
  - employer's experience over last 4 years
- Two surtaxes can also be levied:
  - Pool Tax used to recover benefits that can't be charged to a specific employer
  - Fund-Building Tax used to push solvency over 50%

# **Legislative Update: Taxes**

- Solvency Computation changed:
  - from adequate reserves for 18 months based on highest 3 of last 25 years
  - to adequate reserves for 16½ months based on highest 3 of last 20 years.
- Total tax cut is \$154 million over 6 years.
- About 89,000 employers will not pay state UI taxes for 4 years; 88,000 of these employers have less than 50 employees.

# **Legislative Update: New Employer Tax**

- Provision to experience-rate new employers as soon as possible is extended two years.
- If allowed to expire in 2000, new employers would again pay 2.5% for three years.

# **VEC Administrative Funding**

- Employers also pay a FUTA tax to the Internal Revenue Service (FUTA - Federal Unemployment Tax Act).
- FUTA is a flat tax of 0.8% on first \$7,000 of each employee's wages which costs \$56 per employee per year.

# **VEC Administrative Funding**

- Revenue from the FUTA tax is used to pay for SESA (State Employment Security Agency) administration at both the state and national levels.
- Virginia's employers paid over \$149 million in FUTA taxes in FY 1995.
- VEC receives about \$58 million from U.S. DOL.

# Trust Fund Data

(Millions of Dollars)

	<b>1996 (Actual)</b>	<b>1997 (Projected)</b>
January 1 Balance	\$769.0	(Actual) \$877.2
Tax Revenue	\$255.1	\$195.9
Interest Revenue	\$56.7	\$59.2
Benefits	\$203.5	\$192.7
December 31 Balance	\$877.2	\$939.6
Solvency Level (6/30)	90.5%	130.9%

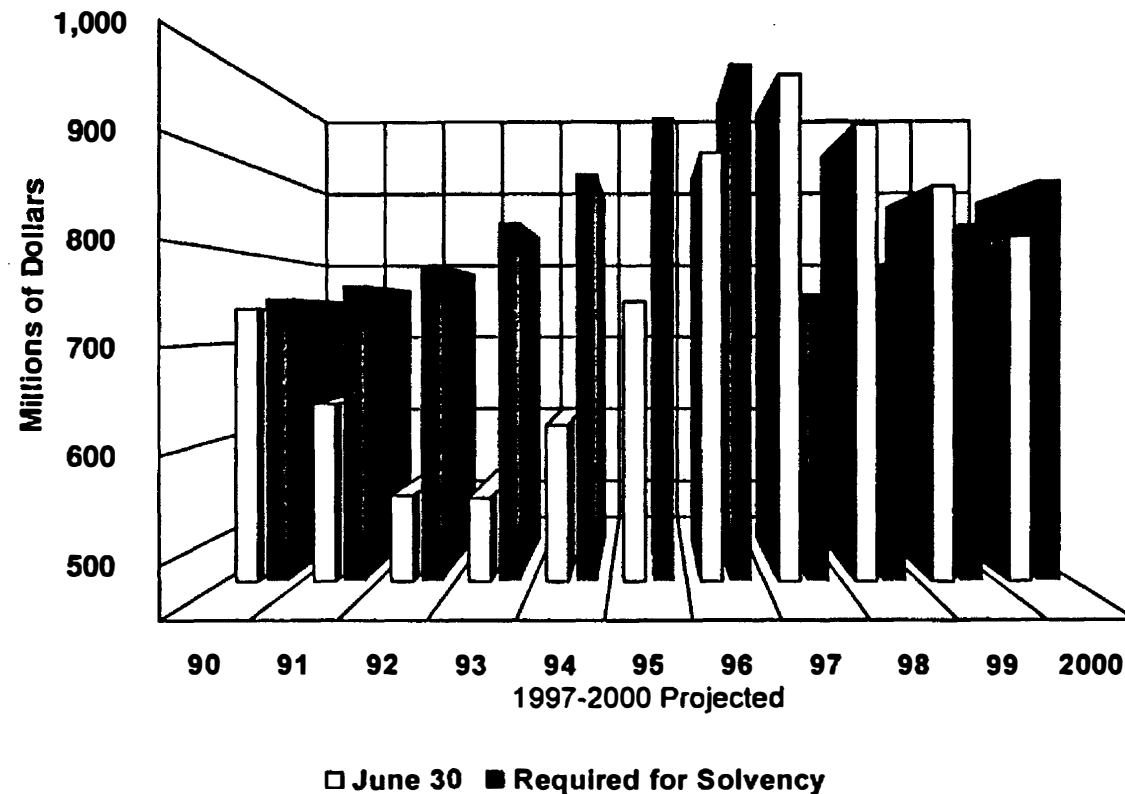


# **Trust Fund Data**

- Tax revenue will decline due to legislated tax cut, higher solvency levels, elimination of Pool Tax, and fewer benefit charges.
- Interest revenue should increase due to higher Trust Fund balances.
- Better economy means benefit payments decline despite legislated benefit increases.
- The Fund should be up by about \$62 million by the end of the year.
- The solvency level is expected to increase by 40 percentage points over 1996 due to change in the law.

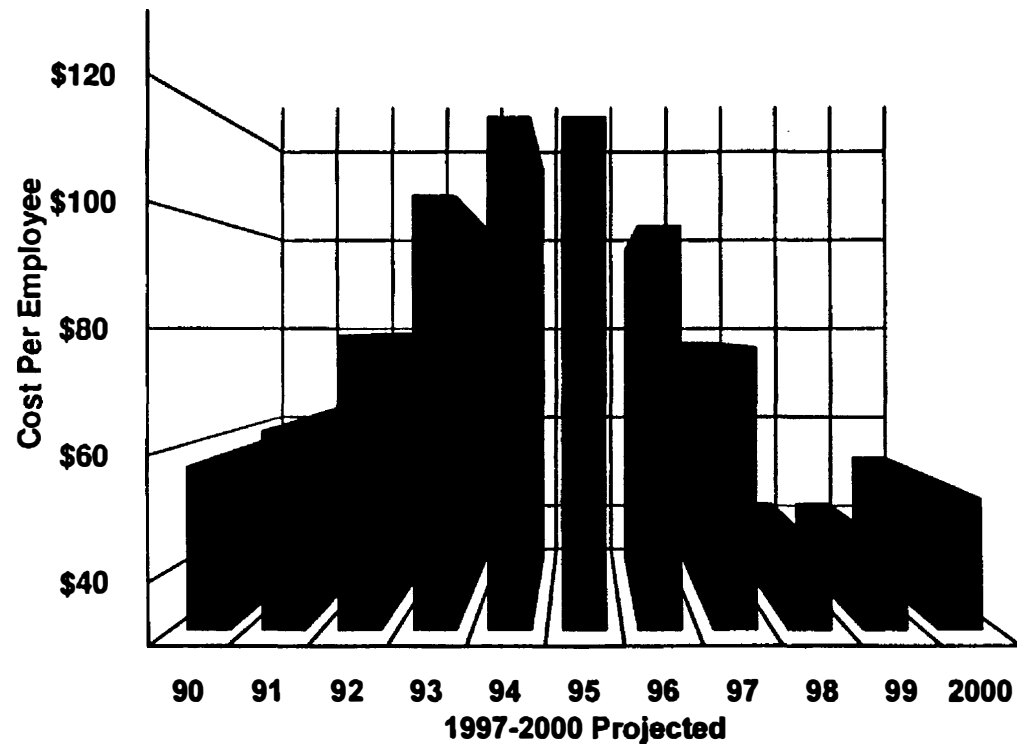
# Trust Fund Balances

- Solvency will exceed 100% for 4 years.
- Projections assume no further legislated changes in benefits or taxes.



# Average Tax

- The average tax peaked at \$115 in 1995 and is expected to fall to \$77 in 1997 and \$42 in 1998 and 1999.
- The 63% decrease in the average tax can be attributed to the tax cut outweighing the benefit increases.
- Projections assume no further legislated changes in benefits or taxes.



# Average Tax Rate by Industry

## Experience-Rated Only

<i><b>Industry</b></i>	<i><b>1997 Jan-Jun Wages</b></i>	<i><b>1997 Jul-Dec Wages</b></i>
Retail Trade	0.44%	0.26%
Services	0.47%	0.29%
Finance, Insurance, Real Estate	0.54%	0.34%
Agriculture, Forestry, Fishing	0.66%	0.45%
Wholesale Trade	0.68%	0.46%
Transportation, Communications, Utilities	0.80%	0.55%
Manufacturing	0.94%	0.65%
Construction	1.04%	0.75%
Mining	2.31%	1.79%

**COMMONWEALTH of VIRGINIA***Virginia Employment Commission*

703 East Main Street

February 23, 1998

Dr. Thomas J. Towberman  
CommissionerPost Office Box 1358  
Richmond, Virginia 23218-1358

The Honorable Robert D. Hull  
 Virginia House of Delegates  
 General Assembly Building, Room 422  
 Capitol Square  
 Richmond, Virginia 23219

Dear Delegate Hull:

In response to your request, I am providing information on those claimants for unemployment compensation who are now qualified for benefits as a result of legislation passed by last year's General Assembly lowering the minimum earnings requirement. The law, which went into effect on July 6, 1997, allows an individual earning \$3,000-3,249 in the highest two quarters of his base period to be qualified for a weekly benefit amount of \$60-64. A brief summary of our findings follows:

**Total claimants qualified for \$60-64 weekly benefit amount: 1356**  
 (through February 10, 1998)

<i>Race</i>	<i>Number</i>	<i>% of Total</i>
<b>White</b>	<b>645</b>	<b>47.6</b>
<i>(male)</i>	238	17.6
<i>(female)</i>	407	30.0
<b>Black</b>	<b>690</b>	<b>50.9</b>
<i>(male)</i>	247	18.2
<i>(female)</i>	443	32.7
<b>Hispanic</b>	<b>13</b>	<b>1.0</b>
<i>(male)</i>	6	0.4
<i>(female)</i>	7	0.5
<b>Other</b>	<b>8</b>	<b>0.6</b>
<i>(male)</i>	3	0.2
<i>(female)</i>	5	0.4
<i>Sex</i>	<i>Number</i>	<i>% of Total</i>
<b>Male</b>	<b>494</b>	<b>36.4</b>
<b>Female</b>	<b>862</b>	<b>63.6</b>

<b>Age</b>		
<b>18-24</b>	<b>435</b>	<b>32.1</b>
<b>25-44</b>	<b>711</b>	<b>52.4</b>
<b>45-64</b>	<b>198</b>	<b>14.6</b>
<b>65-over</b>	<b>12</b>	<b>0.9</b>

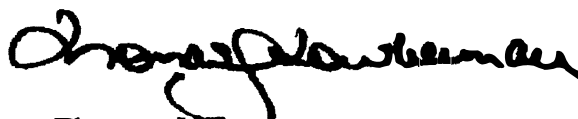
<b>Region</b>		
<b>Central</b>	<b>400</b>	<b>29.5</b>
<b>Eastern</b>	<b>423</b>	<b>31.2</b>
<b>Northern</b>	<b>174</b>	<b>12.8</b>
<b>Western</b>	<b>302</b>	<b>22.3</b>
<b>Interstate</b>	<b>57</b>	<b>4.2</b>

<b>Occupation</b>		
<b>Prof/Tech...</b>	<b>109</b>	<b>8.0</b>
<b>Clerical/Sales</b>	<b>323</b>	<b>23.8</b>
<b>Service</b>	<b>318</b>	<b>23.5</b>
<b>Ag/Fishing...</b>	<b>22</b>	<b>1.6</b>
<b>Processing</b>	<b>49</b>	<b>3.6</b>
<b>Machine</b>	<b>60</b>	<b>4.4</b>
<b>Benchwork</b>	<b>160</b>	<b>11.8</b>
<b>Structural</b>	<b>143</b>	<b>10.5</b>
<b>Miscellaneous</b>	<b>172</b>	<b>12.7</b>

I hope you find this information useful. If I may be of further assistance, please call me at (804) 786-3001.

Sincerely,



Thomas J. Fowberman

c: ✓ The Honorable Jackson E. Reasor, Jr.  
Chair, Jt. Subcommittee Studying the  
Funding Requirements of the Virginia  
Unemployment Compensation Act

The Honorable Barry E. DuVal  
Secretary of Commerce and Trade

**SENATE JOINT RESOLUTION NO. 380**

*Directing the Joint Subcommittee Studying the Funding Requirements of the Virginia Unemployment Compensation Act to study increasing the work time required for unemployment benefit eligibility.*

Agreed to by the Senate, January 30, 1997

Agreed to by the House of Delegates, February 12, 1997

WHEREAS, Senate Joint Resolution No. 29 (1996) continued the Joint Subcommittee Studying the Funding Requirements of the Virginia Unemployment Compensation Act and required it to report to the Governor and the 1998 Session of the General Assembly; and

WHEREAS, Title 60.2 of the Code of Virginia dictates the criteria for the payment of unemployment compensation; and

WHEREAS, under §60.2-528, an employee's unemployment benefits are charged to an employer after an employee has worked for that employer for 30 days; and

WHEREAS, the unemployment benefits charged to an employer determine the rate of unemployment tax paid by the employer; and

WHEREAS, reducing the tax rate that employers must pay for unemployment compensation increases the funds available for growth of the Commonwealth's economy; and

WHEREAS, the high technology involved in today's manufacturing jobs requires employers to adequately assess and evaluate potential employees prior to offering them permanent employment; and

WHEREAS, offering the right job to the right person increases productivity, diminishes unemployment, and reduces administrative costs associated with hiring permanent employees; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Subcommittee Studying the Funding Requirements of the Virginia Unemployment Compensation Act be directed to study increasing the work time required for unemployment benefit eligibility.

Technical assistance shall be provided by the Virginia Employment Commission. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1998 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

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**SENATE JOINT RESOLUTION NO. 77**

*Continuing the Joint Subcommittee Studying the Funding Requirements of the Virginia Unemployment Trust Fund.*

Agreed to by the Senate, February 17, 1998  
Agreed to by the House of Delegates, March 12, 1998

WHEREAS, each year since 1977 a joint subcommittee consisting of five members of the Senate Commerce and Labor Committee and five members of the House Labor and Commerce Committee has met to study the funding requirements of the Virginia Unemployment Trust Fund; and

WHEREAS, such joint subcommittee met in 1996 and 1997 pursuant to Senate Joint Resolution No. 29 (1996) to review the current status and long-term projections for the Unemployment Trust Fund; and

WHEREAS, the Unemployment Trust Fund is financed by Virginia's employers and drawn on by working Virginians who become unemployed and must rely on such fund for unemployment compensation benefits; and

WHEREAS, continued legislative oversight of such fund is warranted to ensure its adequacy to meet current and projected benefit payments; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Subcommittee Studying the Funding Requirements of the Virginia Unemployment Trust Fund be continued. The Joint Subcommittee's membership shall remain the same, with any vacancies to be filled by the Senate Committee on Privileges and Elections and the Speaker of the House, as appropriate.

The direct costs of this study shall not exceed \$3,000.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

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 [Go to \(General Assembly Home\)](#)



**VIRGINIA ACTS OF ASSEMBLY -- CHAPTER**

*An Act to amend the Code of Virginia by adding in Title 9 a chapter numbered 49, consisting of sections numbered 9-371 through 9-374, establishing the Unemployment Trust Fund Commission.*

[S 363]

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 9 a chapter numbered 49, consisting of sections numbered 9-371 through 9-374, as follows:

*CHAPTER 49.  
UNEMPLOYMENT TRUST FUND COMMISSION.*

§9-371. *Unemployment Trust Fund Commission established; purpose.*

*The Unemployment Trust Fund Commission is established as a legislative agency of the Commonwealth and is hereafter referred to in this chapter as the "Commission." The purpose of the Commission shall be, through the exercise of its powers and performance of its duties set forth in this chapter, to study, report and make recommendations on issues of unemployment compensation and the Unemployment Trust Fund.*

§9-372. *Membership; terms; vacancies; chairman and vice chairman; compensation.*

*A. The Commission shall consist of ten members as follows: five members from the House of Delegates to be appointed by the Speaker of the House and five members from the Senate to be appointed by the Senate Committee on Privileges and Elections.*

*B. All appointments to the Commission shall be for terms of four years. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. Whenever any legislative member fails to retain his membership in the house from which he was appointed, he shall relinquish his membership on the Commission and the authority that appointed such member shall make an appointment from the appropriate house to complete the term. Any member may be reappointed for successive terms.*

*C. The members of the Commission shall elect a chairman and a vice chairman annually.*

*D. Legislative members of the Commission shall receive such compensation as is set forth in §14.1-18 and all members shall be reimbursed for their actual expenses incurred by them in the performance of their duties in the work of the Commission.*

§9-373. *Powers and duties of the Commission.*

*The Commission shall have the power and duty to:*

- 1. Evaluate the impact of existing statutes and proposed legislation on unemployment compensation and the Unemployment Trust Fund.*
- 2. Assess the Commonwealth's unemployment compensation programs and examine ways to enhance effectiveness.*
- 3. Monitor the current status and long-term projections for the Unemployment Trust Fund.*
- 4. Report annually its findings and recommendations to the Governor and the General Assembly.*

§9-374. *Staff; cooperation from other state agencies.*

*The Division of Legislative Services shall serve as staff to the Commission. All agencies of the Commonwealth shall assist the Commission upon request.*

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**HOUSE BILL NO. 776**

Offered January 26, 1998

*A BILL to amend and reenact §§ 60.2-114, 60.2-116, 60.2-210, 60.2-218, 60.2-501, 60.2-502, 60.2-507, 60.2-509, 60.2-511, and 60.2-532 of the Code of Virginia, and to repeal §§ 60.2-212, 60.2-212.1, 60.2-213 through 60.2-217 and 60.2-219 of the Code of Virginia, relating to unemployment compensation; definition of employment.*

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 Patron-- Deeds

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 Referred to Committee on Labor and Commerce  
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Be it enacted by the General Assembly of Virginia:

1. That ~~§§60.2-114, 60.2-116, 60.2-210, 60.2-218, 60.1-501, 60.2-502, 60.2-507 60.2-509, 60.2-511, and 60.2-532~~ of the Code of Virginia are amended and reenacted as follows:

§60.2-114. Records and reports.

A. Each employing unit shall keep true and accurate work records, containing such information as the Commission may prescribe. Such records shall be open to inspection and be subject to being copied by the Commission or its authorized representatives at any reasonable time and as often as may be necessary. The Commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Commission deems necessary for the effective administration of this title. Information thus obtained shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the employing unit's identity, except as the Commissioner or his delegates deem appropriate, nor shall such information be used in any judicial or administrative proceeding other than one arising out of the provisions of this title; however, the Commission shall make its records about a claimant available to the Workers' Compensation Commission if it requests such records. However, any claimant at a hearing before an appeal tribunal or the Commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Notwithstanding other provisions of this section, the Commissioner, or his delegate, may, in his discretion, reveal information when such communication is not inconsistent with the proper administration of this title.

B. Notwithstanding the provisions of subsection A, the Commission shall, on a reimbursable basis, furnish wage and unemployment compensation information contained in its records to the Secretary of Health and Human Services and the Division of Child Support Enforcement of the Department of Social Services for their use as necessary for the purposes of the National Directory of New Hires established under § 453 (i) of the Social Security Act.

C. Each employing unit shall report to the Commission the initial employment of any person, ~~as defined in §60.2-212,~~ within thirty-five days of such employment, *as defined in §60.2-218.* Information to be provided shall include (i) the employee's name, address and social security number and (ii) the employer's name, address, and federal or Virginia Employment Commission identification number. This information may be provided by mailing a copy of the employee's W-4 forms, transmitting magnetic tape in a format prescribed by the Commission, or by any other means determined by the Commission to result in timely reporting. Notwithstanding any other provisions of law, the Commission shall transmit this information to the Department of Social Services pursuant to Title 63.1 within twenty-one days of its receipt by the Commission. The Commission shall have the authority to promulgate regulations to administer this provision, including any exemptions which are needed to reduce unnecessary or burdensome reporting. The Department of Social Services shall reimburse the Commission for administrative costs incurred pursuant to this section.

Any member or employee of the Commission who violates any provision of this section shall be fined

not less than \$20 nor more than \$200, or confined in jail for not longer than ninety days, or both.

§60.2-116. Reciprocal agreements.

A. Subject to the approval of the Governor, the Commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in ~~§§60.2-212 through 60.2-219, § 60.2-218~~ or under similar provisions in the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this Commonwealth or within one of such other states. Such arrangements may set forth terms whereby the potential right to benefits accumulated under the unemployment compensation laws of one or more states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency of any state under terms which the Commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

B. Subject to the approval of the Governor, the Commission is also authorized to enter into arrangements with the appropriate agencies of other states or of the federal government:

1. a. Whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages for employment by employers for the purposes of §§ 60.2-218, 60.2-602, 60.2-606, 60.2-607, 60.2-609, 60.2-610, and 60.2-611, ~~subdivision 1 of §60.2-612 and §§60.2-614 through 60.2-617~~, provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this title upon the basis of such wages or services as the Commission finds will be fair and reasonable as to all affected interests; and

b. Whereby the Commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the Commission finds will be fair and reasonable as to all affected interests.

2. Reimbursements so payable under subdivision 1 b of this subsection shall be deemed to be benefits for the purposes of ~~§§60.2-300~~ through 60.2-304, but no reimbursement so payable shall be charged against any employer's account for the purposes of ~~§§60.2-526~~ through 60.2-531. The Commission is hereby authorized to make to other state or federal agencies and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section.

C. Subject to the approval of the Governor, the Commission is also authorized to enter into arrangements with the appropriate agencies of other states or of the federal government:

1. Whereby the Commission may deduct, in accordance with the provisions of ~~§60.2-633~~, from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other state, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made and in accordance with the arrangement between the Commission and the jurisdiction.

2. Whereby the United States agrees to allow the Commission to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States any overpayments made by the Commission to such individual under this title and not previously recovered, in accordance with the same procedures that apply under subdivision 1 of this subsection.

The amendments made by this subsection shall apply to recoveries made on or after July 1, 1987, and shall apply with respect to overpayments made before, on, or after such date.

§60.2-210, Employer.

A. The term "employer" means any employing unit which:

1. In any calendar quarter in either the current or preceding calendar year paid for some service in employment wages of \$1,500 or more or such other amount as provided by federal law pursuant to 26 U.S.C. § 3306; or
2. For some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, has or had in its employment at least one individual, irrespective of whether the same individual was in employment in each such day.

B. The term "employer" shall also mean:

1. Any employing unit which acquired the organization, trade, separate establishment or business or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this title;
2. Any employing unit which acquired the organization, trade or business or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under subsection A of this section;
3. Any employing unit which together with one or more other employing units, is owned or controlled, by legally enforceable means or otherwise, directly or indirectly by the same interests, or which owns or controls one or more other employing units, by legally enforceable means or otherwise, and which if treated as a single unit with such other employing unit, would be an employer under subsection A or B of this section;
4. Any employing unit which having become an employer under subsection A of this section or ~~subdivisions subdivision 1, 2, 3, or 6, 7 or 8~~ of this subsection has not, under § 60.2-509, ceased to be an employer subject to this title;
5. For the effective period of its election pursuant to §60.2-510, any other employing unit which has elected to become fully subject to this title;
6. Any employing unit not an employer by reason of any other subdivision of this section (i) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for taxes required to be paid into a state unemployment fund; or (ii) which, as a condition for approval of this title for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under this title; *or*
- ~~7. Any employing unit for which service in employment, as defined in subdivisions 1 through 3 of subsection A of §60.2-213, is performed;~~
- ~~8. Any employing unit for which service in employment, as defined in subdivision 4 of subsection A of §60.2-213, is performed;~~
- ~~9. For the purposes of subdivision 2 of subsection A of this section and subdivisions 8 and 10 of this subsection if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week;~~
- ~~10. Any employing unit for which agricultural labor in employment as defined in §60.2-214 is performed; or~~
- ~~11. Any employing unit for which domestic service in employment as defined in §60.2-215 is performed.~~

C. 1. In determining whether an employing unit for which service other than domestic service is also performed is an employer under subsection A ~~or subdivision 10 of subsection B~~ of this section, the wages earned or the employment of an employee performing domestic service shall not be taken into account.

2. In determining whether an employing unit for which service other than agricultural labor is also performed is an employer under subsection A ~~or subdivision 11 of subsection B~~ of this section, the wages earned or the employment of an employee performing service in agricultural labor shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for the purpose of subsection A of this section.

§60.2-218. Employment.

~~Notwithstanding any other provision of §§60.2-212 through 60.2-217 and §60.2-219, the~~ The term "employment" shall mean service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for taxes required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this title.

§60.2-501. Financing of benefits to employees of nonprofit organizations.

A. Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization, or group of organizations, described in § 501 (c) (3) of the United States Internal Revenue Code which is exempt from income tax under § 501 (a) of that Code.

B. Any nonprofit organization which, pursuant to ~~subdivision 8 of subsection B of §60.2-210~~ §60.2-218, is or becomes subject to this title shall pay taxes under the provisions of §60.2-511, unless it elects, in accordance with this subsection, to pay to the Commission for the unemployment fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, and that is for weeks of unemployment which begin during the effective period of such election.

1. Any nonprofit organization which is or becomes subject to this title may elect to become liable for payments in lieu of taxes for a period of not less than one taxable year beginning with January 1 of each year, provided it files with the Commission a written notice of its election within the thirty-day period immediately following such date.

2. Any nonprofit organization which becomes subject to this title may elect to become liable for payments in lieu of taxes for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the Commission not later than thirty days immediately following the date of the determination of such subjectivity.

3. Any nonprofit organization which makes an election in accordance with subdivision 1 or 2 of this subsection shall continue to be liable for payments in lieu of taxes until it files with the Commission a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

4. Any nonprofit organization which has been paying taxes under this title may change to a reimbursable basis by filing with the Commission, not later than thirty days prior to the beginning of any taxable year, a written notice of election to become liable for payments in lieu of taxes. Such election shall not be terminable by the organization for that and the next year.

5. The Commission may for good cause extend the period within which a notice of election, or a notice of termination, shall be filed and may permit an election to be retroactive but not any earlier than January 1 of the current calendar year.

6. The Commission, in accordance with such regulations as it may prescribe, shall notify each nonprofit organization of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of §60.2-500.

C. Payments in lieu of taxes shall be made in accordance with the provisions of this subsection, including either subdivision 1 or 2.

1. a. At the end of each calendar quarter, or at the end of any other period as determined by the Commission, the Commission shall bill each nonprofit organization, or group of such organizations, which has elected to make payments in lieu of taxes for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

b. If the final adjudication of a disputed claim finds the claimant totally or partially ineligible for benefits, the nonprofit organization shall be liable for any bill resulting from payments made to the claimant during or prior to the appeal process, whether made by erroneous statutory interpretation, administrative error, or incorrect wage reporting.

2. a. Each nonprofit organization that has elected payments in lieu of taxes may request permission to make such payments as provided in this paragraph. Such method of payment shall become effective upon approval by the Commission.

b. At the end of each calendar quarter, or at the end of such other period as determined by the Commission, the Commission shall bill each nonprofit organization for an amount representing one of the following:

(1) One-tenth of one percent of its total payroll for the preceding calendar year.

(2) Such percentage of its total payroll for the immediately preceding calendar year as the Commission shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year.

(3) For any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the Commission shall determine.

c. At the end of each taxable year, the Commission may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

d. At the end of each taxable year, the Commission shall determine whether the total of payments for such year made by a nonprofit organization is more or less than the total amount of regular benefits plus one-half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with subdivision 3 of this subsection. If the total payments exceed the amount so determined for the taxable year, all or a part of the excess may, at the discretion of the Commission, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

3. Payment of any bill rendered under subdivision 1 or 2 of this subsection shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subdivision 5 of this subsection.

4. Payments made by any nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the

organization.

5. The amount due specified in any bill from the Commission shall be conclusive on the organization unless, not later than thirty days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an appeal with the Commission, setting forth the grounds for such appeal. Proceedings on appeal to the Commission from the amount of a bill rendered under this subsection or a redetermination of such amount shall be in accordance with the provisions of §60.2-500. The decision of the Commission shall be subject to the provisions of §60.2-500.

6. Past-due payments of amounts in lieu of taxes shall be subject to the same interest and penalties that, pursuant to §60.2-519, apply to past-due taxes.

#### §60.2-502. Bonding of nonprofit organizations.

A. In the discretion of the Commission, any nonprofit organization that elects to become liable for payments in lieu of taxes shall be required within thirty days after the effective date of its election (i) to execute and file with the Commission a surety bond approved by the Commission or (ii) to deposit with the Commission money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this section.

B. The amount of the bond or deposit required by this section shall be a percentage, determined by the Commission, of the organization's taxable wages paid for employment as defined in ~~subdivision 4 of subsection A of § 60.2-213~~ §60.2-218 for the four calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money or securities, whichever date is most recent and applicable. If the nonprofit organization did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the Commission.

C. Any bond deposited under this section shall be in force for a period of not less than two taxable years and shall be renewed with the approval of the Commission, at such time as the Commission may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of taxes. The Commission shall require adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of taxes when due, together with any applicable interest and penalties provided for in subdivision 6 of subsection C of §60.2-501, shall render the surety liable on such bond to the extent of the bond, as though the surety was such organization.

D. Any deposit of money or securities made in accordance with this section shall be retained by the Commission in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The Commission may deduct from the money deposited under this section by a nonprofit organization or sell the securities it has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of taxes and any applicable interest and penalties provided for in subdivision 6 of subsection C of §60.2-501. The Commission shall require the organization within thirty days following any deduction from a money deposit or sale of deposited securities under the provisions of this subsection to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The Commission may review the adequacy of the deposit made by any organization. If, as a result of such review, it determines that an adjustment is necessary, the organization shall be required to make additional deposit within thirty days of written notice of the determination or the Commission shall return to it such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the state law.

E. If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased



amount or to increase or make whole the amount of a previously made deposit, as provided under this subsection, the Commission may terminate such organization's election to make payments in lieu of taxes and such termination shall continue for not less than the four consecutive calendar quarter period beginning with the quarter in which such termination becomes effective; however, the Commission may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty days.

§60.2-507. Financing of benefits to employees of governmental entities.

A. Any governmental entity which is an employer by virtue of ~~subdivision 7 of subsection B of §60.2-210~~ ~~§ 60.2-218~~ shall be permitted to join with one or more other governmental entities to form a joint account in accordance with regulations prescribed by the Commission.

B. Each governmental entity which is an employer by virtue of ~~subdivision 7 of subsection B of §60.2-210~~ ~~§60.2-218~~ and each joint account formed pursuant to subsection A of this section may elect to finance benefits to its employees by either taxes as set forth in §§ 60.2-526 through 60.2-533, or payments in lieu of taxes. Any such election to make payments in lieu of taxes shall be made in accordance with the provisions of subdivisions 1, 2 and 4 of subsection B of §60.2-501. Termination of such election to make payments in lieu of taxes shall be made in accordance with subdivision 3 of subsection B of §60.2-501.

C. If the election to make payments in lieu of taxes is exercised, payments shall be in an amount equivalent to the full amount of regular and extended benefits paid that is attributable to service in the employ of such governmental entity. If benefits paid to an individual are based on wages paid by more than one employer and one or more employers are liable for payments in lieu of taxes, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of §60.2-504. Notwithstanding the provisions of this subsection, if the final adjudication of a disputed claim finds the claimant totally or partially ineligible for benefits, the governmental entity shall be liable for any payment made to the claimant during or prior to the appeal process, whether made by erroneous statutory interpretation, administrative error, or incorrect wage reporting.

D. Payments in lieu of taxes by governmental entities as set forth in this section shall be made at such times and in such manner as the Commission may determine and prescribe by regulation.

§60.2-509. Termination of coverage.

A. Except as otherwise provided in this section and §60.2-510, an employing unit shall cease to be an employer subject to this title as of January 1 of any year subsequent to December 31, 1972, only if:

1. The employer files with the Commission a written application for termination of coverage;
2. The Commission finds that (i) there were no twenty different days, each day being in a different week within the preceding calendar year, or (ii) there were no twenty different days, each day being in a different week within the current calendar year, within which such employing unit employed one or more individuals in employment subject to this title; and
3. The Commission finds that such employing unit did not pay in any calendar quarter in the preceding or current calendar year for service in employment wages of \$1,500 or more.

~~B. Except as otherwise provided in this section and §60.2-510, an employing unit as defined in subdivisions 1 through 4 of subsection A of §60.2-213 or §60.2-214 or §60.2-215, shall cease to be an employer subject to this title as of January 1 of any year, only if it files with the Commission a written application for termination of coverage and the Commission finds that no services performed for such employing unit constitute employment as defined in subdivisions 1 through 4 of subsection A of §60.2-213 or §60.2-214 or §60.2-215.~~

~~C.B.~~ Any employing unit which is an employer at the end of any calendar year solely by acquisition

during such year as provided in subdivision 1 of subsection B of §60.2-210, shall cease to be an employer subject to this title as of January 1 of the succeeding calendar year without the filing of the written application required of all other employers, if the Commission finds that there were no twenty different days, each day being in a different week within the preceding or current calendar year that such employing unit and its predecessors in title, treated as a single employing unit:

1. Employed one or more individuals subject to this title; and
2. Did not pay in any calendar quarter in the preceding or current calendar year for service in employment wages of \$1,500 or more.

Whenever any employer, during any completed calendar year, fails to be subject to the payment of taxes solely because no individual has earned wages from such employer during such calendar year, the Commission may, after not less than thirty days' notice in writing mailed to such employer at his last known address, cause such employer to cease to be an employer subject to this title as of January 1 of the calendar year in which such notice is given.

§60.2-511. How and when taxes payable.

Taxes, as set forth in this and the succeeding article, shall accrue and become payable by each employer for each calendar year in which he is subject to this title. Such taxes shall be based upon wages payable for employment, as defined in ~~§§60.2-212 through 60.2-219~~ §60.2-218, occurring in such calendar year. Such taxes shall become due and be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe. Payment of such taxes and the filing of related returns shall be deemed to have been made as of the date of the postmark affixed to such payment and returns by the United States Postal Service, or by receipt given by such representative of the Commission if physical delivery of such payment and related returns is made to an office of the Commission.

§60.2-532. Pool cost charges.

A. As of January 1 of each year, to all experience rating tax rates established pursuant to §60.2-531, to all assigned tax rates established pursuant to §§60.2-515, 60.2-526, 60.2-527 and 60.2-538, there shall be added the pool cost charges as determined in subsection B of this section.

B. The pool cost charge rate rounded to the nearest one-hundredth of a percent shall be determined as follows:

1. Pool costs for a given calendar year shall be those costs defined in subdivision 2 of this subsection for the thirty-six consecutive calendar month period ending on June 30 immediately preceding that calendar year. The pool cost charge rate shall be pool costs divided by payrolls for such period.

2. Pool costs shall consist of (i) benefit charges which cannot be assigned to an individual employer pursuant to ~~§§60.2-210, 60.2-212 through 60.2-219 and 60.2-218~~, or subsection C of §60.2-528, or cannot be charged to an individual employer due to his becoming an inactive account pursuant to §60.2-210 or §60.2-509, (ii) the difference in the amount the Commission pays pursuant to subdivision 2 of subsection A of §60.2-609 and the amount the Commission receives pursuant to subdivision 3 of subsection A of §60.2-609, and (iii) the difference between the benefit charges of all employers with a maximum experience rating tax rate and the amount of the taxes resulting from applying the maximum experience rating tax rate against the payrolls of the same employers. The term "payrolls" as used in this section shall mean the taxable payroll on which taxes have been paid on or before September 30 immediately following such June 30.

3. When the fund balance factor for the most recent twelve-month period ending on June 30 of the immediately preceding calendar year is greater than fifty percent, interest earned on the balance which shall stand to the credit of the account of the Commonwealth of Virginia in the Unemployment Trust Fund in the treasury of the United States shall be subtracted from pool costs, except that in no instance

shall pool costs be less than zero.

2. That §§60.2-212 and 60.2-212.1, 60.2-213 through 60.2-217, and 60.2-219 of the Code of Virginia are repealed.

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