

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 781*

Short Title: BOR/Independent Staff/Data Tracking. (Public)

Sponsors: Senators Hartsell (Primary Sponsor) and Clark.

Referred to: Rules and Operations of the Senate

April 28, 2016

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE INDEPENDENCE AND EFFICIENCY OF THE BOARD OF REVIEW, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Effective July 1, 2016, G.S. 96-15.3 reads as rewritten:

"§ 96-15.3. Board of Review.

(a) Purpose. – The Board of Review (BOR) is created within the Division. The purpose of the BOR is to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Division. The Department of Commerce must assign staff to the BOR. Division and to develop, document, and adopt the policies, procedures, and standards necessary to ensure consistency and continuity of higher level appeals operations. The BOR and its staff must perform their job shall perform its duties and responsibilities independent of the Governor, the General Assembly, the Department, and the Division and in accordance with any written guidance promulgated and issued by the U.S. Department of Labor.

(b) ~~Members.~~ Members and Staff. – The BOR consists of three members appointed by the Governor and subject to confirmation by the General Assembly as provided in subsection (c) of this section. One member must be classified as representative of employees, one member must be classified as representative of employers, and one member must be classified as representative of the general public. The member appointed to represent the general public will serve as chair of the BOR and must be a licensed attorney in this State.

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

The BOR shall be supported by adequate legal and support staff in order to carry out its purposes. To ensure its independence, the staff of the BOR shall report to the chair of the BOR. The BOR staff shall perform its duties and responsibilities independent of the Governor, the General Assembly, the Department, and the Division and in accordance with any written guidance promulgated and issued by the U.S. Department of Labor.

(c) Confirmation. – Appointments of members to serve on the BOR are subject to confirmation by the General Assembly by joint resolution. The Governor must submit the name of the individual the Governor wants to appoint to the BOR to the General Assembly for confirmation on or before May 1 of the year of the expiration of the term. If the General Assembly does not confirm the appointment by May 30, the office will be considered vacant and must be



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1 filled in accordance with subsection (d) of this section. The Governor may not resubmit the name
2 of the nominee whom the General Assembly did not confirm for the office. If the Governor fails to
3 timely submit a nomination, the General Assembly will appoint to fill the succeeding term as
4 provided in subsection (e) of this section.

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

10 (1) During legislative session. – If a vacancy in an office arises or exists when the
11 General Assembly is in session, the Governor must submit the name of the
12 individual to be appointed to fill the vacancy for the remainder of the unexpired
13 term within 30 days after the vacancy arises to the General Assembly for
14 confirmation by the General Assembly. If the General Assembly does not
15 confirm the appointment within 30 days after the General Assembly receives
16 the nomination, the office will be considered vacant and must be filled in
17 accordance with this subsection. The Governor may not resubmit the name of
18 the nominee whom the General Assembly did not confirm for the vacancy. If
19 the Governor fails to timely submit a nomination, the General Assembly will
20 appoint to fill the vacancy as provided in subsection (e) of this section.

21 (2) During legislative interim. – If a vacancy in an office arises or exists when the
22 General Assembly is not in session, the Governor must appoint an individual to
23 that office to serve on an interim basis pending confirmation by the General
24 Assembly. The Governor must submit the name of the individual to be
25 appointed to fill the vacancy for the remainder of the unexpired term to the
26 General Assembly for confirmation within 14 days of the date the General
27 Assembly convenes or reconvenes for the next regular session. If the Governor
28 fails to timely submit a nomination, the General Assembly will appoint to fill
29 the vacancy as provided in subsection (e) of this section.

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

37 (f) Data Tracking. – The Division shall assist the BOR in collecting and tracking data
38 necessary to support appeals operations and make continuous improvements to those operations.
39 At a minimum, the following data shall be tracked:

40 (1) Reversals of BOR determinations by the Superior Court.

41 (2) Referrals from staff attorneys for dismissals, short affirms, and long decisions.

42 (3) Cases remanded back to lower authority appeals or referred back to staff
43 attorneys for modification.

44 (4) Deviations between the recommendations made by staff attorneys and the
45 determinations of the BOR."

46 **SECTION 2.** Effective July 1, 2016, the Department of Commerce (Department),
47 Division of Employment Security (DES), shall transfer, at minimum, two attorney and four
48 administrative staff positions within DES to the control of the Board of Review (BOR) in
49 accordance with G.S. 96-15.3(a), as enacted by this act. The Department shall set up a separate
50 fund code titled "Board of Review" within the DES budget code 24650. Of the funds appropriated
51 to DES for the administration of the unemployment insurance program as required by federal law

1 and guidelines, DES shall transfer to the new fund code for BOR at least the sum of four hundred
2 fifteen thousand dollars (\$415,000) for the 2016-2017 fiscal year to pay the staff costs of the
3 Board of Review. By October 1, 2016, the Department shall report on the transfer to the chairs of
4 the Joint Legislative Oversight Committee on Unemployment Insurance and the chairs of the Joint
5 Natural and Economic Resources Committee of the Senate and House of Representatives
6 Appropriations Committees.

7 **SECTION 3.** By October 1, 2016, the Board of Review shall adopt policies,
8 procedures, and standards for higher level appeals in accordance with G.S. 96-15.3, as enacted by
9 this act.

10 **SECTION 4.** By November 1, 2016, the Board of Review shall track data in
11 accordance with G.S. 96-15.3, as enacted by this act.

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