

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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**SENATE BILL 741
Commerce, Small Business and Entrepreneurship Committee Substitute Adopted
5/14/07
House Committee Substitute Favorable 7/14/08**

Short Title: UI/Advance Payments.

(Public)

Sponsors:

Referred to:

March 14, 2007

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE LAW GOVERNING ADVANCE PAYMENTS BY
2 NONPROFIT ORGANIZATIONS AND INDIAN TRIBES.
3

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 96-9(d) reads as rewritten:

6 "(d) Benefits paid to employees of nonprofit organizations shall be financed in
7 accordance with the provisions of this paragraph. For the purposes of this paragraph, a
8 nonprofit organization is an organization (or group of organizations) described in
9 section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under
10 section 501(a) of the Internal Revenue Code.

11 (1) a. Any nonprofit organization which becomes subject to this
12 Chapter on or after January 1, 1972, shall pay contributions
13 under the provisions of this Chapter, unless it elects in
14 accordance with this paragraph to pay the Commission for the
15 Unemployment Insurance Fund an amount equal to the amount
16 of regular benefits and of one half of the extended benefits paid,
17 that is attributable to service in the employ of such nonprofit
18 organization, to individuals for weeks of unemployment which
19 begin within a benefit year established during the effective
20 period of such election.

21 b. Any nonprofit organization which is or becomes subject to this
22 Chapter on or after January 1, 1972, may elect to become liable
23 for payments in lieu of contributions for a period of not less
24 than four calendar years beginning with the date on which
25 subjectivity begins by filing a written notice of its election with
26 the Commission not later than 30 days immediately following
27 the date of written notification of the determination of such

1 subjectivity. Provided if notification is not by registered mail,
2 the election may be made on or after January 1, 1972, within six
3 months following the date of the written notification of the
4 determination of such subjectivity. If such election is not made
5 as set forth herein, no election can be made until after four
6 calendar years have elapsed under the contributions method of
7 payment.

8 c. Any nonprofit organization which makes an election in
9 accordance with subparagraph b of this paragraph will continue
10 after such four calendar years to be liable for payments in lieu
11 of contributions until it files with the Commission a written
12 notice terminating its election not later than 30 days prior to the
13 next January 1, effective on such January 1. Provided, however,
14 no employer granted or in reimbursement status will be allowed
15 refund of any previous balances used in a transfer to
16 reimbursement status.

17 d. Any nonprofit organization which has been paying
18 contributions under this Chapter for a period of at least four
19 consecutive calendar years subsequent to January 1, 1972, may
20 elect to change to a reimbursement basis by filing with the
21 Commission not later than 30 days prior to the next January 1 a
22 written notice of election to become liable for payments in lieu
23 of contributions, effective on such January 1. Such election
24 shall not be terminable for a period of four calendar years. In
25 the event of such an election, the account of such employer
26 shall be closed and shall not be used in any future computation
27 of such employer's contribution rate in any manner whatsoever.
28 ~~Provided, however, any nonprofit employer formerly paying~~
29 ~~contributions who elects and qualifies to change to a~~
30 ~~reimbursement basis may be relieved of the requirement to pay~~
31 ~~one percent (1%) of taxable wages as required by~~
32 ~~G.S. 96-9(d)(2)a to the following extent and upon the following~~
33 ~~conditions:~~

34 1. ~~Any nonprofit employer which has, for the year the~~
35 ~~election will be effective, an experience rating of 1.7 or~~
36 ~~less, will have transferred from its experience rating~~
37 ~~account an amount equal to one percent (1%) of its~~
38 ~~payroll as reported for each of the four calendar quarters~~
39 ~~which constitute the election year;~~

40 2. ~~Any nonprofit employer which has, for the year the~~
41 ~~election will be effective, an experience rating of less~~
42 ~~than 2.7 but more than 1.7, will have transferred from its~~
43 ~~experience rating account an amount equal to one half of~~
44 ~~one percent (.5%) of its payroll as reported for each of~~

- 1 ~~the four calendar quarters which constitute the election~~
2 ~~year. Such employers shall make advance payments to~~
3 ~~the Commission quarterly, computed at one half of one~~
4 ~~percent (.5%) of the taxable wages reported as provided~~
5 ~~in G.S. 96-9(d)(2)a;~~
6 3. ~~Any nonprofit employer which has, for the year the~~
7 ~~election will become effective, an experience rating of~~
8 ~~2.7 or more, upon electing to change to a reimbursement~~
9 ~~basis, will meet all the requirements of G.S. 96-9(d)(2)a,~~
10 ~~including making advance payments computed at one~~
11 ~~percent (1%) of taxable wages.~~
12 d1. Any nonprofit organization which makes an election in
13 accordance with subparagraph b. of this paragraph must secure
14 such election by making a payment in lieu of contributions as
15 provided in subdivision (2) of this subsection, posting a surety
16 bond from an insurance company duly licensed to conduct
17 business in this State, or obtaining an irrevocable letter of credit
18 with the Commission to insure the payments in lieu of
19 contributions as provided in subdivision (2) of this subsection.
20 Any surety bond posted under this paragraph shall be in force
21 for a period of not less than two calendar years and shall be
22 renewed with the approval of the Commission. The
23 Commission may adopt rules to implement the provisions of
24 this subparagraph.
25 e. The Commission, in accordance with such regulations as it may
26 adopt, shall notify each nonprofit organization of any
27 determination which it may make of its status as an employer
28 and of the effective date of any election which it makes and of
29 any termination of such election. Such determinations shall be
30 subject to reconsideration, appeal and review.
31 (2) Payments in lieu of contributions shall be made in accordance with the
32 provisions of this subparagraph and shall be processed as provided
33 herein.
34 a. Quarterly contributions and wage reports and advance payments
35 shall be submitted to the Commission quarterly under the same
36 conditions and requirements of G.S. 96-9 and 96-10, except that
37 the amount of advance payments shall be computed as one
38 percent (1%) of taxable wages and entered on such reports;
39 provided that such advance payments shall become effective
40 only with respect to the first four thousand two hundred dollars
41 (\$4,200) in wages paid in a calendar year until January 1, 1978.
42 On and after that date advance payments shall be effective with
43 respect to the federally required wage base provided that after
44 December 31, 1983, the wage base shall be the same as that

1 provided for in G.S. 96-9(a)(5). Collection of such advance
2 payments shall be made as provided for the collection of
3 contributions in G.S. 96-10.

4 Beginning January 1, 1978, any employer making quarterly
5 reports of employment to the Commission and if such employer
6 is a newly electing reimbursement employer he shall pay
7 contributions of one percent (1%) of taxable wages entered on
8 such reports.

9 Any employer paying by reimbursement having been, prior
10 to July 1, under the reimbursement method of payment for the
11 preceding calendar year, shall continue to file quarterly reports
12 but shall make no payments with those reports.

13 b. The Commission shall establish a separate account for each
14 such employer and such account shall be credited, and
15 maintained as provided in G.S. 96-9(c)(1), except that advance
16 payments shall be credited in full and voluntary contributions
17 are not applicable.

18 c. Benefits paid shall be allocated to the employer's account in
19 accordance with G.S. 96-9(c)(2)a but charged to such account
20 without the application of any multiplier, and no benefits shall
21 be noncharged except amounts equal to fifty percent (50%) of
22 extended benefits paid and amounts equal to one hundred
23 percent (100%) of benefits paid through error.

24 d. As of July 31 of each year, and prior to January 1 of the
25 succeeding year, the Commission shall determine the balance of
26 each such employer's account and shall furnish him with a
27 statement of all charges and credits thereto.

28 ~~As of the second computation date (August 1) following the~~
29 ~~effective date of liability and as of each computation date~~
30 ~~thereafter, any credit balance remaining in the employer's~~
31 ~~account (after all applicable postings) in excess of whichever is~~
32 ~~the greater (a) benefits charged to such account during the 12~~
33 ~~months ending on such computation date, or (b) one percent~~
34 ~~(1%) of taxable wages for the 12 months ending on June 30~~
35 ~~preceding such computation date shall be refunded. Any such~~
36 ~~refund shall be made prior to February 1 following such~~
37 ~~computation date.~~

38 Should the balance in such account not equal that requiring
39 a refund, the employer shall upon notice and demand for
40 payment mailed to his last known address pay into his account
41 an amount that will bring such balance to the minimum required
42 for a refund. Such amount shall become due on or before the
43 tenth day following the mailing of such notice and demand for
44 payment. Any such amount unpaid on the due date shall be

1 collected in the same manner, including interest, as prescribed
2 in G.S. 96-10.

3 ~~Upon a change in election as to the method of payment from~~
4 ~~reimbursement to contributions, or upon termination of~~
5 ~~coverage and after all applicable benefits paid based on wages~~
6 ~~paid prior to such change in election or termination of coverage~~
7 ~~have been charged, any credit balance in such account shall be~~
8 ~~refunded to the employer.~~

9 Should there be a debit balance in such account, the
10 employer shall, upon notice and demand for payment, mailed to
11 his last-known address, pay into his account an amount equal to
12 such debit balance. Such amount shall become due on or before
13 the tenth day following the mailing of such notice and demand
14 for payment.

15 Any such amount unpaid on the date due shall be collected
16 in the same manner, including interest, as prescribed in
17 G.S. 96-10.

18 Beginning January 1, 1978, each employer paying by
19 reimbursement shall have his account computed on computation
20 date (August 1) and if there is a deficit shall be billed for an
21 amount necessary to bring his account to one percent (1%) of
22 his taxable payroll. Any amount of his account in excess of that
23 required to equal one percent (1%) of his payroll shall be
24 refunded. Amounts due from any employer to bring his account
25 to a one percent (1%) balance shall be billed as soon as
26 practical and payment will be due within 25 days from the date
27 of mailing of the statement of amount due. Amounts due from
28 any nonprofit organization to bring its account to a one percent
29 (1%) balance shall be billed as soon as practical, and payment
30 will be due within 60 days from the date of mailing of the
31 statement of the amount due.

- 32 e. The Commission may make necessary rules and regulations
33 with respect to coverage of a group of nonprofit organizations
34 and with respect to the reimbursement of benefits payments by
35 such group of nonprofit organizations.
- 36 (3) a. Any benefits paid to any claimant which are based on
37 previously uncovered employment which are reimbursable by
38 the federal government shall not be charged to a nonprofit
39 organization which makes payments to the State
40 Unemployment Insurance Fund in lieu of contributions.
- 41 b. For purposes of this paragraph previously uncovered
42 employment for which benefits are reimbursable by the federal
43 government means services performed before July 1, 1978, in
44 the case of a week of unemployment beginning before July 1,

1 1978, or before January 1, 1978, in the case of a week of
2 unemployment beginning after July 1, 1978, and to the extent
3 that assistance under Title II of the Emergency Jobs and
4 Unemployment Assistance Act of 1974 (SUA) was not paid to
5 such individuals on the basis of such service."

6 **SECTION 2.** G.S. 96-9(i) reads as rewritten:

7 "(i) Indian Tribes. – Benefits paid to employees of Indian tribe employing units
8 shall be financed in accordance with the provisions of this subsection. For the purposes
9 of this subsection, an "Indian tribe employing unit" is an Indian tribe, a subdivision or
10 subsidiary of an Indian tribe, or a business enterprise wholly owned by an Indian tribe.

11 (1) Election. –

- 12 a. An Indian tribe employing unit shall pay contributions under
13 the provisions of this Chapter, unless it elects in accordance
14 with this subsection to pay the Commission for the
15 Unemployment Insurance Fund an amount equal to the amount
16 of benefits paid that is attributable to service in the employ of
17 the unit, to individuals for weeks of unemployment that begin
18 within a benefit year established during the effective period of
19 the election.
- 20 b. An Indian tribe employing unit may elect to become liable for
21 payments in lieu of contributions for a period of not less than
22 three calendar years by filing a written notice of its election
23 with the Commission at least 30 days before the January 1
24 effective date of the election.
- 25 c. An Indian tribe employing unit that makes an election in
26 accordance with this subsection will continue after the end of
27 the three calendar years to be liable for payments in lieu of
28 contributions until it files with the Commission a written notice
29 terminating its election at least 30 days before the January 1
30 effective date of the termination.
- 31 d. The account of an Indian tribe employing unit that has been
32 paying contributions under this Chapter for a period of at least
33 three consecutive calendar years and that elects to change to a
34 reimbursement basis shall be closed and shall not be used in any
35 future computation of the unit's contribution rate in any manner.
36 ~~manner. except that the unit may be relieved of the requirement~~
37 ~~to pay one percent (1%) of taxable wages as required by~~
38 ~~subdivision (2) of this subsection to the following extent and~~
39 ~~upon the following conditions:~~
- 40 ~~1. An Indian tribe employing unit that has, for the year the~~
41 ~~election will be effective, an experience rating of 1.7 or~~
42 ~~less will have transferred from its experience rating~~
43 ~~account an amount equal to one percent (1%) of its~~

- 1 payroll as reported for each of the four calendar quarters
2 that constitute the election year.
- 3 2. ~~An Indian tribe employing unit that has, for the year the
4 election will be effective, an experience rating of less
5 than 2.7 but more than 1.7 will have transferred from its
6 experience rating account an amount equal to one half of
7 one percent (.5%) of its payroll as reported for each of
8 the four calendar quarters that constitute the election
9 year. These employing units shall make advance
10 payments to the Commission quarterly, computed at
11 one half of one percent (.5%) of the taxable wages
12 reported as provided in subdivision (2) of this
13 subsection.~~
- 14 3. ~~An Indian tribe employing unit that has, for the year the
15 election will become effective, an experience rating of
16 2.7 or more, upon electing to change to a reimbursement
17 basis, will meet all the requirements of subdivision (2) of
18 this subsection, including making advance payments
19 computed at one percent (1%) of taxable wages.~~
- 20 e. The Commission, in accordance with regulations it adopts, shall
21 notify each Indian tribe employing unit of any determination of
22 the effective date of any election it makes and of any
23 termination of the election. These determinations shall be
24 subject to reconsideration, appeal, and review.
- 25 (2) Procedure. – Indian tribe employing units' payments by reimbursement
26 in lieu of contributions shall be made and processed as provided in this
27 subdivision.
- 28 a. Quarterly contributions and wage reports and advance payments
29 shall be submitted to the Commission quarterly under the same
30 conditions and requirements of G.S. 96-9 and G.S. 96-10,
31 except that the amount of advance payments shall be computed
32 as one percent (1%) of taxable wages and entered on the
33 reports, and except that the wage base shall be the same as that
34 provided for in G.S. 96-9(a)(5). Collection of these advance
35 payments shall be made as provided for the collection of
36 contributions in G.S. 96-10.
- 37 Any Indian tribe employing unit paying by reimbursement
38 having been, prior to July 1, under the reimbursement method
39 of payment for the preceding calendar year, shall continue to
40 file quarterly reports but shall make no payments with those
41 reports.
- 42 b. The Commission shall establish a separate account for each
43 Indian tribe employing unit paying by reimbursement. The
44 account shall be credited and maintained as provided in

1 G.S. 96-9(c)(1), except that advance payments shall be credited
2 in full, and voluntary contributions are not applicable.

3 c. Benefits paid shall be allocated to the employer's account in
4 accordance with G.S. 96-9(c)(2)a. but charged to the account
5 without the application of any multiplier, and no benefits shall
6 be noncharged except amounts of benefits paid through error.

7 d. As of July 31 of each year, and prior to January 1 of the
8 succeeding year, the Commission shall determine the balance of
9 each Indian tribe employing unit's account and shall furnish the
10 unit with a statement of all charges and credits to the account.

11 ~~As of August 1 of each year, there shall be refunded any~~
12 ~~credit balance remaining in the Indian tribe employing unit's~~
13 ~~account (after all applicable postings) in excess of one percent~~
14 ~~(1%) of taxable wages for the 12 months ending on June 30~~
15 ~~preceding the computation date. The refund must be made~~
16 ~~before February 1 following the computation date.~~

17 If the balance in the account does not equal one percent
18 (1%) of taxable wages, the Indian tribe employing unit must,
19 upon notice and demand for payment mailed to its last known
20 address, pay into the account an amount that will bring the
21 balance to one percent (1%) of taxable wages. This amount
22 becomes due on or before the 25th day after the notice and
23 demand for payment is mailed. Any amount unpaid on the due
24 date shall be collected in the same manner, including interest, as
25 prescribed in G.S. 96-10.

26 ~~Upon a change in election as to the method of payment from~~
27 ~~reimbursement to contributions, or upon termination of~~
28 ~~coverage and after all applicable benefits paid based on wages~~
29 ~~paid before the change in election or termination of coverage~~
30 ~~have been charged, any credit balance in the account shall be~~
31 ~~refunded to the Indian tribe employing unit.~~

32 If there is a debit balance in the account, the Indian tribe
33 employing unit must, upon notice and demand for payment
34 mailed to its last known address, pay into the account an
35 amount necessary to bring the account to one percent (1%) of
36 taxable wages. This amount becomes due on or before the 25th
37 day after the notice and demand for payment is mailed. Any
38 amount unpaid on the due date shall be collected in the same
39 manner, including interest, as prescribed in G.S. 96-10.

40 e. Notices to Indian tribe employing units of payment and
41 reporting delinquency must include information that failure to
42 make full payment within the time prescribed will cause the
43 unit to become liable for contributions under subsection (a) of
44 this section, will cause the unit to lose the option of making

1 payment by reimbursement in lieu of contributions, and could
2 cause the unit to lose coverage under this Chapter for services
3 performed for the unit."
4

SECTION 3. This act becomes effective January 1, 2010.