
SENATE BILL 5135

State of Washington

62nd Legislature

2011 Regular Session

By Senators Kohl-Welles, Holmquist Newbry, King, Honeyford, Schoesler, Becker, Hobbs, Rockefeller, Baumgartner, Hill, Litzow, and Benton; by request of Governor Gregoire

Read first time 01/14/11. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to responding to the current economic conditions by
2 temporarily modifying the unemployment insurance program; amending RCW
3 50.22.010, 50.22.155, and 50.29.025; creating a new section; and
4 declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 50.22.010 and 2009 c 493 s 4 are each amended to read
7 as follows:

8 As used in this chapter, unless the context clearly indicates
9 otherwise:

10 (1) "Extended benefit period" means a period which:

11 (a) Begins with the third week after a week for which there is an
12 "on" indicator; and

13 (b) Ends with the third week after the first week for which there
14 is an "off" indicator: PROVIDED, That no extended benefit period shall
15 last for a period of less than thirteen consecutive weeks, and further
16 that no extended benefit period may begin by reason of an "on"
17 indicator before the fourteenth week after the close of a prior
18 extended benefit period which was in effect with respect to this state.

1 (2) There is an "on" indicator for this state for a week if the
2 commissioner determines, in accordance with the regulations of the
3 United States secretary of labor, that for the period consisting of
4 such week and the immediately preceding twelve weeks:

5 (a) The rate of insured unemployment, not seasonally adjusted,
6 equaled or exceeded one hundred twenty percent of the average of such
7 rates for the corresponding thirteen-week period ending in each of the
8 preceding two calendar years and equaled or exceeded five percent; or

9 (b) For benefits for weeks of unemployment beginning after March 6,
10 1993:

11 (i) The average rate of total unemployment, seasonally adjusted, as
12 determined by the United States secretary of labor, for the period
13 consisting of the most recent three months for which data for all
14 states are published before the close of the week equals or exceeds six
15 and one-half percent; and

16 (ii) The average rate of total unemployment in the state,
17 seasonally adjusted, as determined by the United States secretary of
18 labor, for the three-month period referred to in (b)(i) of this
19 subsection, equals or exceeds one hundred ten percent of the average
20 for either or both of the corresponding three-month periods ending in
21 the two preceding calendar years.

22 (c) This subsection applies as provided under the tax relief,
23 unemployment insurance reauthorization, and job creation act of 2010
24 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent
25 date as may be provided by the department by rule, consistent with the
26 purposes of this subsection:

27 (i) The average rate of insured unemployment, not seasonally
28 adjusted, equaled or exceeded one hundred twenty percent of the average
29 of such rates for the corresponding thirteen-week period ending in all
30 of the preceding three calendar years and equaled or exceeded five
31 percent; or

32 (ii) The average rate of total unemployment, seasonally adjusted,
33 as determined by the United States secretary of labor, for the period
34 consisting of the most recent three months for which data for all
35 states are published before the close of the week equals or exceeds six
36 and one-half percent; and

37 (iii) The average rate of total unemployment in the state,
38 seasonally adjusted, as determined by the United States secretary of

1 labor, for the three-month period referred to in (c)(ii) of this
2 subsection, equals or exceeds one hundred ten percent of the average
3 for any of the corresponding three-month periods ending in the three
4 preceding calendar years.

5 (3) "High unemployment period" means any period of unemployment
6 beginning after March 6, 1993, during which an extended benefit period
7 would be in effect if:

8 (a) The average rate of total unemployment, seasonally adjusted, as
9 determined by the United States secretary of labor, for the period
10 consisting of the most recent three months for which data for all
11 states are published before the close of the week equals or exceeds
12 eight percent; and

13 (b) The average rate of total unemployment in the state, seasonally
14 adjusted, as determined by the United States secretary of labor, for
15 the three-month period referred to in (a) of this subsection, equals or
16 exceeds one hundred ten percent of the average for either or both of
17 the corresponding three-month periods ending in the two preceding
18 calendar years.

19 (c) This subsection applies as provided under the tax relief,
20 unemployment insurance reauthorization, and job creation act of 2010
21 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent
22 date as may be provided by the department by rule, consistent with the
23 purposes of this subsection.

24 (i) The average rate of total unemployment, seasonally adjusted, as
25 determined by the United States secretary of labor, for the period
26 consisting of the most recent three months for which data for all
27 states are published before the close of the week equals or exceeds
28 eight percent; and

29 (ii) The average rate of total unemployment in the state,
30 seasonally adjusted, as determined by the United States secretary of
31 labor, for the three-month period referred to in (a) of this
32 subsection, equals or exceeds one hundred ten percent of the average
33 for any of the corresponding three-month periods ending in the three
34 preceding calendar years.

35 (4) There is an "off" indicator for this state for a week only if,
36 for the period consisting of such week and immediately preceding twelve
37 weeks, none of the options specified in subsection (2) or (3) of this
38 section result in an "on" indicator.

1 (5) "Regular benefits" means benefits payable to an individual
2 under this title or under any state law (including benefits payable to
3 federal civilian employees and to ex-servicemen pursuant to 5 U.S.C.
4 chapter 85) other than extended benefits or additional benefits.

5 (6) "Extended benefits" means benefits payable for weeks of
6 unemployment beginning in an extended benefit period to an individual
7 under this title or under any state law (including benefits payable to
8 federal civilian employees and to ex-servicemen pursuant to 5 U.S.C.
9 chapter 85) other than regular or additional benefits.

10 (7) "Additional benefits" are benefits totally financed by the
11 state and payable under this title to exhaustees by reason of
12 conditions of high unemployment or by reason of other special factors.

13 (8) "Eligibility period" of an individual means:

14 (a) The period consisting of the weeks in his or her benefit year
15 which begin in an extended benefit period that is in effect in this
16 state and, if his or her benefit year ends within such extended benefit
17 period, any weeks thereafter which begin in such period; or

18 (b) For an individual who is eligible for emergency unemployment
19 compensation during the extended benefit period beginning February 15,
20 2009, the period consisting of the week ending February 28, 2009,
21 (~~through the week ending May 29, 2010~~) and applies as provided under
22 the tax relief, unemployment insurance reauthorization, and job
23 creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010,
24 or such subsequent date as may be provided by the department by rule,
25 consistent with the purposes of this subsection.

26 (9) "Additional benefit eligibility period" of an individual means
27 the period consisting of the weeks in his or her benefit year which
28 begin in an additional benefit period that is in effect and, if his or
29 her benefit year ends within such additional benefit period, any weeks
30 thereafter which begin in such period.

31 (10) "Exhaustee" means an individual who, with respect to any week
32 of unemployment in his or her eligibility period:

33 (a) Has received, prior to such week, all of the regular benefits
34 that were payable to him or her under this title or any other state law
35 (including dependents' allowances and regular benefits payable to
36 federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85)
37 in his or her current benefit year that includes such week; or

1 (b) Has received, prior to such week, all of the regular benefits
2 that were available to him or her under this title or any other state
3 law (including dependents' allowances and regular benefits available to
4 federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85)
5 in his or her current benefit year that includes such week, after the
6 cancellation of some or all of his or her wage credits or the total or
7 partial reduction of his or her rights to regular benefits: PROVIDED,
8 That, for the purposes of (a) and (b), an individual shall be deemed to
9 have received in his or her current benefit year all of the regular
10 benefits that were payable to him or her, or available to him or her,
11 as the case may be, even though:

12 (i) As a result of a pending appeal with respect to wages or
13 employment, or both, that were not included in the original monetary
14 determination with respect to his or her current benefit year, he or
15 she may subsequently be determined to be entitled to more regular
16 benefits; or

17 (ii) By reason of the seasonal provisions of another state law, he
18 or she is not entitled to regular benefits with respect to such week of
19 unemployment (although he or she may be entitled to regular benefits
20 with respect to future weeks of unemployment in the next season, as the
21 case may be, in his or her current benefit year), and he or she is
22 otherwise an exhaustee within the meaning of this section with respect
23 to his or her right to regular benefits under such state law seasonal
24 provisions during the season or off season in which that week of
25 unemployment occurs; or

26 (iii) Having established a benefit year, no regular benefits are
27 payable to him or her during such year because his or her wage credits
28 were canceled or his or her right to regular benefits was totally
29 reduced as the result of the application of a disqualification; or

30 (c) His or her benefit year having ended prior to such week, he or
31 she has insufficient wages or employment, or both, on the basis of
32 which he or she could establish in any state a new benefit year that
33 would include such week, or having established a new benefit year that
34 includes such week, he or she is precluded from receiving regular
35 benefits by reason of the provision in RCW 50.04.030 which meets the
36 requirement of section 3304(a)(7) of the Federal Unemployment Tax Act,
37 or the similar provision in any other state law; and

1 (d)(i) Has no right for such week to unemployment benefits or
2 allowances, as the case may be, under the Railroad Unemployment
3 Insurance Act, the Trade Expansion Act of 1962, and such other federal
4 laws as are specified in regulations issued by the United States
5 secretary of labor; and

6 (ii) Has not received and is not seeking for such week unemployment
7 benefits under the unemployment compensation law of Canada, unless the
8 appropriate agency finally determines that he or she is not entitled to
9 unemployment benefits under such law for such week.

10 (11) "State law" means the unemployment insurance law of any state,
11 approved by the United States secretary of labor under section 3304 of
12 the internal revenue code of 1954.

13 **Sec. 2.** RCW 50.22.155 and 2009 c 3 s 4 are each amended to read as
14 follows:

15 (1) This section applies to claims with an effective date on or
16 after April 5, 2009.

17 (2) Subject to availability of funds, training benefits are
18 available for an individual who is eligible for or has exhausted
19 entitlement to unemployment compensation benefits when:

20 (a) The individual is a dislocated worker as defined in RCW
21 50.04.075 and, after assessment of the individual's labor market,
22 occupation, or skills, is determined to need job-related training to
23 find suitable employment in the individual's labor market. The
24 assessment of demand for the individual's occupation or skill sets must
25 be substantially based on declining occupation or skill sets and high-
26 demand occupations identified in local labor market areas by the local
27 workforce development councils in cooperation with the employment
28 security department and its labor market information division; or

29 (b) For claims with an effective date on or after September 7,
30 2009, the individual:

31 (i) Earned an average hourly wage in the individual's base year
32 that is less than one hundred thirty percent of the state minimum
33 wage((7)) and, after assessment, it is determined that the individual's
34 earning potential will be enhanced through vocational training. The
35 individual's average hourly wage is calculated by dividing the total
36 wages paid by the total hours worked in the individual's base year;

1 (ii) Served in the United States military or the Washington
2 national guard during the twelve-month period prior to the application
3 date, was honorably discharged from military service or the Washington
4 national guard and, after assessment, is determined to need job-related
5 training to find suitable employment in the individual's labor market;

6 (iii) Is currently serving in the Washington national guard and,
7 after assessment, is determined to need job-related training to find
8 suitable employment in the individual's labor market; or

9 (iv) Is disabled due to an injury or illness and, after assessment,
10 is determined to be unable to return to his or her previous occupation
11 and to need job-related training to find suitable employment in the
12 individual's labor market.

13 (3)(a) The individual must develop an individual training program
14 that is submitted to the commissioner for approval within ninety days
15 after the individual is notified by the employment security department
16 of the requirements of this section;

17 (b) The individual must enter the approved training program by one
18 hundred twenty days after the date of the notification, unless the
19 employment security department determines that the training is not
20 available during the one hundred twenty days, in which case the
21 individual enters training as soon as it is available;

22 (c) The department may waive the deadlines established under this
23 subsection for reasons deemed by the commissioner to be good cause.

24 (4) The individual must be enrolled in training approved under this
25 section on a full-time basis as determined by the educational
26 institution, except that less than full-time training may be approved
27 when the individual has a physical, mental, or emotional disability
28 that precludes enrollment on a full-time basis.

29 (5) The individual must make satisfactory progress in the training
30 as defined by the commissioner and certified by the educational
31 institution.

32 (6) An individual is not eligible for training benefits under this
33 section if he or she:

34 (a) Is a standby claimant who expects recall to his or her regular
35 employer; or

36 (b) Has a definite recall date that is within six months of the
37 date he or she is laid off.

1 (7) The following definitions apply throughout this section unless
2 the context clearly requires otherwise.

3 (a) "Educational institution" means an institution of higher
4 education as defined in RCW 28B.10.016 or an educational institution as
5 defined in RCW 28C.04.410, including equivalent educational
6 institutions in other states.

7 (b) "High-demand occupation" means an occupation with a substantial
8 number of current or projected employment opportunities.

9 (c) "Training benefits" means additional benefits paid under this
10 section.

11 (d) "Training program" means:

12 (i) An education program determined to be necessary as a
13 prerequisite to vocational training after counseling at the educational
14 institution in which the individual enrolls under his or her approved
15 training program; or

16 (ii) A vocational training program at an educational institution
17 that:

18 (A) Is targeted to training for a high-demand occupation;

19 (B) Is likely to enhance the individual's marketable skills and
20 earning power; and

21 (C) Meets the criteria for performance developed by the workforce
22 training and education coordinating board for the purpose of
23 determining those training programs eligible for funding under Title I
24 of P.L. 105-220.

25 "Training program" does not include any course of education
26 primarily intended to meet the requirements of a baccalaureate or
27 higher degree, unless the training meets specific requirements for
28 certification, licensing, or for specific skills necessary for the
29 occupation.

30 (8) Benefits shall be paid as follows:

31 (a) The total training benefit amount shall be fifty-two times the
32 individual's weekly benefit amount, reduced by the total amount of
33 regular benefits and extended benefits paid, or deemed paid, with
34 respect to the benefit year.

35 (b) The weekly benefit amount shall be the same as the regular
36 weekly amount payable during the applicable benefit year and shall be
37 paid under the same terms and conditions as regular benefits.

1 (c) Training benefits shall be paid before any extended benefits
2 but not before any similar federally funded program.

3 (d) Training benefits are not payable for weeks more than two years
4 beyond the end of the benefit year of the regular claim. However,
5 training benefits are not payable for weeks more than three years
6 beyond the end of the benefit year of the regular claim when
7 individuals are eligible for benefits in accordance with RCW
8 50.22.010(2)(c) or (3)(c).

9 (9) The requirement under RCW 50.22.010(10) relating to exhausting
10 regular benefits does not apply to an individual otherwise eligible for
11 training benefits under this section when the individual's benefit year
12 ends before his or her training benefits are exhausted and the
13 individual is eligible for a new benefit year. These individuals will
14 have the option of remaining on the original claim or filing a new
15 claim.

16 (10) Individuals who receive training benefits under RCW 50.22.150
17 or this section are not eligible for training benefits under this
18 section for five years from the last receipt of training benefits.

19 (11) An individual eligible to receive a trade readjustment
20 allowance under chapter 2, Title II of the trade act of 1974, as
21 amended, shall not be eligible to receive benefits under this section
22 for each week the individual receives such trade readjustment
23 allowance.

24 (12) An individual eligible to receive emergency unemployment
25 compensation under any federal law shall not be eligible to receive
26 benefits under this section for each week the individual receives such
27 compensation.

28 (13) All base year employers are interested parties to the approval
29 of training and the granting of training benefits.

30 (14) Each local workforce development council, in cooperation with
31 the employment security department and its labor market information
32 division, must identify occupations and skill sets that are declining
33 and high-demand occupations and skill sets. Each local workforce
34 development council shall update this information annually or more
35 frequently if needed.

36 (15) The commissioner shall adopt rules as necessary to implement
37 this section.

1 **Sec. 3.** RCW 50.29.025 and 2010 c 72 s 1 are each amended to read
2 as follows:

3 (1) For contributions assessed for rate years 2005 through 2009,
4 the contribution rate for each employer subject to contributions under
5 RCW 50.24.010 shall be the sum of the array calculation factor rate and
6 the graduated social cost factor rate determined under this subsection,
7 and the solvency surcharge determined under RCW 50.29.041, if any.

8 (a) The array calculation factor rate shall be determined as
9 follows:

10 (i) An array shall be prepared, listing all qualified employers in
11 ascending order of their benefit ratios. The array shall show for each
12 qualified employer: (A) Identification number; (B) benefit ratio; and
13 (C) taxable payrolls for the four consecutive calendar quarters
14 immediately preceding the computation date and reported to the
15 employment security department by the cut-off date.

16 (ii) Each employer in the array shall be assigned to one of forty
17 rate classes according to his or her benefit ratio as follows, and,
18 except as provided in RCW 50.29.026, the array calculation factor rate
19 for each employer in the array shall be the rate specified in the rate
20 class to which the employer has been assigned:

Benefit Ratio		Rate	Rate
At least	Less than	Class	(percent)
	0.000001	1	0.00
0.000001	0.001250	2	0.13
0.001250	0.002500	3	0.25
0.002500	0.003750	4	0.38
0.003750	0.005000	5	0.50
0.005000	0.006250	6	0.63
0.006250	0.007500	7	0.75
0.007500	0.008750	8	0.88
0.008750	0.010000	9	1.00
0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30
0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75

1	0.016250	0.017500	15	1.90
2	0.017500	0.018750	16	2.05
3	0.018750	0.020000	17	2.20
4	0.020000	0.021250	18	2.35
5	0.021250	0.022500	19	2.50
6	0.022500	0.023750	20	2.65
7	0.023750	0.025000	21	2.80
8	0.025000	0.026250	22	2.95
9	0.026250	0.027500	23	3.10
10	0.027500	0.028750	24	3.25
11	0.028750	0.030000	25	3.40
12	0.030000	0.031250	26	3.55
13	0.031250	0.032500	27	3.70
14	0.032500	0.033750	28	3.85
15	0.033750	0.035000	29	4.00
16	0.035000	0.036250	30	4.15
17	0.036250	0.037500	31	4.30
18	0.037500	0.040000	32	4.45
19	0.040000	0.042500	33	4.60
20	0.042500	0.045000	34	4.75
21	0.045000	0.047500	35	4.90
22	0.047500	0.050000	36	5.05
23	0.050000	0.052500	37	5.20
24	0.052500	0.055000	38	5.30
25	0.055000	0.057500	39	5.35
26	0.057500		40	5.40

27 (b) The graduated social cost factor rate shall be determined as
28 follows:

29 (i)(A) Except as provided in (b)(i)(B) and (C) of this subsection,
30 the commissioner shall calculate the flat social cost factor for a rate
31 year by dividing the total social cost by the total taxable payroll.
32 The division shall be carried to the second decimal place with the
33 remaining fraction disregarded unless it amounts to five hundredths or
34 more, in which case the second decimal place shall be rounded to the
35 next higher digit. The flat social cost factor shall be expressed as
36 a percentage.

1 (B) If, on the cut-off date, the balance in the unemployment
2 compensation fund is determined by the commissioner to be an amount
3 that will provide more than ten months of unemployment benefits, the
4 commissioner shall calculate the flat social cost factor for the rate
5 year immediately following the cut-off date by reducing the total
6 social cost by the dollar amount that represents the number of months
7 for which the balance in the unemployment compensation fund on the cut-
8 off date will provide benefits above ten months and dividing the result
9 by the total taxable payroll. However, the calculation under this
10 subsection (1)(b)(i)(B) for a rate year may not result in a flat social
11 cost factor that is more than four-tenths lower than the calculation
12 under (b)(i)(A) of this subsection for that rate year.

13 For the purposes of this subsection, the commissioner shall
14 determine the number of months of unemployment benefits in the
15 unemployment compensation fund using the benefit cost rate for the
16 average of the three highest calendar benefit cost rates in the twenty
17 consecutive completed calendar years immediately preceding the cut-off
18 date or a period of consecutive calendar years immediately preceding
19 the cut-off date that includes three recessions, if longer.

20 (C) The minimum flat social cost factor calculated under this
21 subsection (1)(b) shall be six-tenths of one percent, except that if
22 the balance in the unemployment compensation fund is determined by the
23 commissioner to be an amount that will provide:

24 (I) At least twelve months but less than fourteen months of
25 unemployment benefits, the minimum shall be five-tenths of one percent;
26 or

27 (II) At least fourteen months of unemployment benefits, the minimum
28 shall be five-tenths of one percent, except that, for employers in rate
29 class 1, the minimum shall be forty-five hundredths of one percent.

30 (ii)(A) Except as provided in (b)(ii)(B) of this subsection, the
31 graduated social cost factor rate for each employer in the array is the
32 flat social cost factor multiplied by the percentage specified as
33 follows for the rate class to which the employer has been assigned in
34 (a)(ii) of this subsection, except that the sum of an employer's array
35 calculation factor rate and the graduated social cost factor rate may
36 not exceed six and five-tenths percent or, for employers whose North
37 American industry classification system code is within "111," "112,"

1 "1141," "115," "3114," "3117," "42448," or "49312," may not exceed six
2 percent through rate year 2007 and may not exceed five and seven-tenths
3 percent for rate years 2008 and 2009:

4 (I) Rate class 1 - 78 percent;

5 (II) Rate class 2 - 82 percent;

6 (III) Rate class 3 - 86 percent;

7 (IV) Rate class 4 - 90 percent;

8 (V) Rate class 5 - 94 percent;

9 (VI) Rate class 6 - 98 percent;

10 (VII) Rate class 7 - 102 percent;

11 (VIII) Rate class 8 - 106 percent;

12 (IX) Rate class 9 - 110 percent;

13 (X) Rate class 10 - 114 percent;

14 (XI) Rate class 11 - 118 percent; and

15 (XII) Rate classes 12 through 40 - 120 percent.

16 (B) For contributions assessed beginning July 1, 2005, through
17 December 31, 2007, for employers whose North American industry
18 classification system code is "111," "112," "1141," "115," "3114,"
19 "3117," "42448," or "49312," the graduated social cost factor rate is
20 zero.

21 (iii) For the purposes of this section:

22 (A) "Total social cost" means the amount calculated by subtracting
23 the array calculation factor contributions paid by all employers with
24 respect to the four consecutive calendar quarters immediately preceding
25 the computation date and paid to the employment security department by
26 the cut-off date from the total unemployment benefits paid to claimants
27 in the same four consecutive calendar quarters. To calculate the flat
28 social cost factor for rate year 2005, the commissioner shall calculate
29 the total social cost using the array calculation factor contributions
30 that would have been required to be paid by all employers in the
31 calculation period if (a) of this subsection had been in effect for the
32 relevant period. To calculate the flat social cost factor for rate
33 years 2010 and 2011, the forty-five dollar increase paid as part of an
34 individual's weekly benefit amount as provided in RCW 50.20.1201 shall
35 not be considered for purposes of calculating the total unemployment
36 benefits paid to claimants in the four consecutive calendar quarters
37 immediately preceding the computation date.

1 (B) "Total taxable payroll" means the total amount of wages subject
2 to tax, as determined under RCW 50.24.010, for all employers in the
3 four consecutive calendar quarters immediately preceding the
4 computation date and reported to the employment security department by
5 the cut-off date.

6 (c) For employers who do not meet the definition of "qualified
7 employer" by reason of failure to pay contributions when due:

8 (i) The array calculation factor rate shall be two-tenths higher
9 than that in rate class 40, except employers who have an approved
10 agency-deferred payment contract by September 30th of the previous rate
11 year. If any employer with an approved agency-deferred payment
12 contract fails to make any one of the succeeding deferred payments or
13 fails to submit any succeeding tax report and payment in a timely
14 manner, the employer's tax rate shall immediately revert to an array
15 calculation factor rate two-tenths higher than that in rate class 40;
16 and

17 (ii) The social cost factor rate shall be the social cost factor
18 rate assigned to rate class 40 under (b)(ii) of this subsection.

19 (d) For all other employers not qualified to be in the array:

20 (i) For rate years 2005, 2006, and 2007:

21 (A) The array calculation factor rate shall be a rate equal to the
22 average industry array calculation factor rate as determined by the
23 commissioner, plus fifteen percent of that amount; however, the rate
24 may not be less than one percent or more than the array calculation
25 factor rate in rate class 40; and

26 (B) The social cost factor rate shall be a rate equal to the
27 average industry social cost factor rate as determined by the
28 commissioner, plus fifteen percent of that amount, but not more than
29 the social cost factor rate assigned to rate class 40 under (b)(ii) of
30 this subsection.

31 (ii) For contributions assessed for rate years 2008 and 2009:

32 (A) The array calculation factor rate shall be a rate equal to the
33 average industry array calculation factor rate as determined by the
34 commissioner, multiplied by the history factor, but not less than one
35 percent or more than the array calculation factor rate in rate class
36 40;

37 (B) The social cost factor rate shall be a rate equal to the
38 average industry social cost factor rate as determined by the

1 commissioner, multiplied by the history factor, but not more than the
2 social cost factor rate assigned to rate class 40 under (b)(ii) of this
3 subsection; and

4 (C) The history factor shall be based on the total amounts of
5 benefits charged and contributions paid in the three fiscal years
6 ending prior to the computation date by employers not qualified to be
7 in the array, other than employers in (c) of this subsection, who were
8 first subject to contributions in the calendar year ending three years
9 prior to the computation date. The commissioner shall calculate the
10 history ratio by dividing the total amount of benefits charged by the
11 total amount of contributions paid in this three-year period by these
12 employers. The division shall be carried to the second decimal place
13 with the remaining fraction disregarded unless it amounts to five
14 one-hundredths or more, in which case the second decimal place shall be
15 rounded to the next higher digit. The commissioner shall determine the
16 history factor according to the history ratio as follows:

	History		History
	Ratio		Factor
			(percent)
	At least	Less than	
(I)		.95	90
(II)	.95	1.05	100
(III)	1.05		115

24 (2) For contributions assessed in rate year 2010 and thereafter,
25 the contribution rate for each employer subject to contributions under
26 RCW 50.24.010 shall be the sum of the array calculation factor rate and
27 the graduated social cost factor rate determined under this subsection,
28 and the solvency surcharge determined under RCW 50.29.041, if any.

29 (a) The array calculation factor rate shall be determined as
30 follows:

31 (i) An array shall be prepared, listing all qualified employers in
32 ascending order of their benefit ratios. The array shall show for each
33 qualified employer: (A) Identification number; (B) benefit ratio; and
34 (C) taxable payrolls for the four consecutive calendar quarters

1 immediately preceding the computation date and reported to the
2 employment security department by the cut-off date.

3 (ii) Each employer in the array shall be assigned to one of forty
4 rate classes according to his or her benefit ratio as follows, and,
5 except as provided in RCW 50.29.026, the array calculation factor rate
6 for each employer in the array shall be the rate specified in the rate
7 class to which the employer has been assigned:

8	Benefit Ratio		Rate	Rate
9	At least	Less than	Class	(percent)
10		0.000001	1	0.00
11	0.000001	0.001250	2	0.11
12	0.001250	0.002500	3	0.22
13	0.002500	0.003750	4	0.33
14	0.003750	0.005000	5	0.43
15	0.005000	0.006250	6	0.54
16	0.006250	0.007500	7	0.65
17	0.007500	0.008750	8	0.76
18	0.008750	0.010000	9	0.88
19	0.010000	0.011250	10	1.01
20	0.011250	0.012500	11	1.14
21	0.012500	0.013750	12	1.28
22	0.013750	0.015000	13	1.41
23	0.015000	0.016250	14	1.54
24	0.016250	0.017500	15	1.67
25	0.017500	0.018750	16	1.80
26	0.018750	0.020000	17	1.94
27	0.020000	0.021250	18	2.07
28	0.021250	0.022500	19	2.20
29	0.022500	0.023750	20	2.38
30	0.023750	0.025000	21	2.50
31	0.025000	0.026250	22	2.63
32	0.026250	0.027500	23	2.75
33	0.027500	0.028750	24	2.88
34	0.028750	0.030000	25	3.00
35	0.030000	0.031250	26	3.13
36	0.031250	0.032500	27	3.25

1	0.032500	0.033750	28	3.38
2	0.033750	0.035000	29	3.50
3	0.035000	0.036250	30	3.63
4	0.036250	0.037500	31	3.75
5	0.037500	0.040000	32	4.00
6	0.040000	0.042500	33	4.25
7	0.042500	0.045000	34	4.50
8	0.045000	0.047500	35	4.75
9	0.047500	0.050000	36	5.00
10	0.050000	0.052500	37	5.15
11	0.052500	0.055000	38	5.25
12	0.055000	0.057500	39	5.30
13	0.057500		40	5.40

14 (b) The graduated social cost factor rate shall be determined as
15 follows:

16 (i)(A) Except as provided in (b)(i)(B) and (C) of this subsection,
17 the commissioner shall calculate the flat social cost factor for a rate
18 year by dividing the total social cost by the total taxable payroll.
19 The division shall be carried to the second decimal place with the
20 remaining fraction disregarded unless it amounts to five hundredths or
21 more, in which case the second decimal place shall be rounded to the
22 next higher digit. The flat social cost factor shall be expressed as
23 a percentage.

24 (B) If, on the cut-off date, the balance in the unemployment
25 compensation fund is determined by the commissioner to be an amount
26 that will provide more than ten months of unemployment benefits, the
27 commissioner shall calculate the flat social cost factor for the rate
28 year immediately following the cut-off date by reducing the total
29 social cost by the dollar amount that represents the number of months
30 for which the balance in the unemployment compensation fund on the cut-
31 off date will provide benefits above ten months and dividing the result
32 by the total taxable payroll. However, the calculation under this
33 subsection (2)(b)(i)(B) for a rate year may not result in a flat social
34 cost factor that is more than four-tenths lower than the calculation
35 under (b)(i)(A) of this subsection for that rate year. For rate year
36 2011, the calculation may not result in a flat social cost factor that
37 is more than one and twenty-two one-hundredths percent.

1 For the purposes of this subsection, the commissioner shall
2 determine the number of months of unemployment benefits in the
3 unemployment compensation fund using the benefit cost rate for the
4 average of the three highest calendar benefit cost rates in the twenty
5 consecutive completed calendar years immediately preceding the cut-off
6 date or a period of consecutive calendar years immediately preceding
7 the cut-off date that includes three recessions, if longer.

8 (C) The minimum flat social cost factor calculated under this
9 subsection (2)(b) shall be six-tenths of one percent, except that if
10 the balance in the unemployment compensation fund is determined by the
11 commissioner to be an amount that will provide:

12 (I) At least ten months but less than eleven months of unemployment
13 benefits, the minimum shall be five-tenths of one percent; or

14 (II) At least eleven months but less than twelve months of
15 unemployment benefits, the minimum shall be forty-five hundredths of
16 one percent; or

17 (III) At least twelve months but less than thirteen months of
18 unemployment benefits, the minimum shall be four-tenths of one percent;
19 or

20 (IV) At least thirteen months but less than fifteen months of
21 unemployment benefits, the minimum shall be thirty-five hundredths of
22 one percent; or

23 (V) At least fifteen months but less than seventeen months of
24 unemployment benefits, the minimum shall be twenty-five hundredths of
25 one percent; or

26 (VI) At least seventeen months but less than eighteen months of
27 unemployment benefits, the minimum shall be fifteen hundredths of one
28 percent; or

29 (VII) At least eighteen months of unemployment benefits, the
30 minimum shall be fifteen hundredths of one percent through rate year
31 2011 and shall be zero thereafter.

32 (ii)(A) Except as provided in (b)(ii)(B) of this subsection, the
33 graduated social cost factor rate for each employer in the array is the
34 flat social cost factor multiplied by the percentage specified as
35 follows for the rate class to which the employer has been assigned in
36 (a)(ii) of this subsection, except that the sum of an employer's array
37 calculation factor rate and the graduated social cost factor rate may
38 not exceed six percent or, for employers whose North American industry

1 classification system code is within "111," "112," "1141," "115,"
2 "3114," "3117," "42448," or "49312," may not exceed five and four-
3 tenths percent:

- 4 ~~((A))~~ (I) Rate class 1 - 78 percent;
- 5 ~~((B))~~ (II) Rate class 2 - 82 percent;
- 6 ~~((C))~~ (III) Rate class 3 - 86 percent;
- 7 ~~((D))~~ (IV) Rate class 4 - 90 percent;
- 8 ~~((E))~~ (V) Rate class 5 - 94 percent;
- 9 ~~((F))~~ (VI) Rate class 6 - 98 percent;
- 10 ~~((G))~~ (VII) Rate class 7 - 102 percent;
- 11 ~~((H))~~ (VIII) Rate class 8 - 106 percent;
- 12 ~~((I))~~ (IX) Rate class 9 - 110 percent;
- 13 ~~((J))~~ (X) Rate class 10 - 114 percent;
- 14 ~~((K))~~ (XI) Rate class 11 - 118 percent; and
- 15 ~~((L))~~ (XII) Rate classes 12 through 40 - 120 percent.

16 (B) For rate year 2011, the graduated social cost factor rate for
17 each employer in the array is the flat social cost factor multiplied by
18 the percentage specified as follows for the rate class to which the
19 employer has been assigned in (a)(ii) of this subsection, except that
20 the sum of an employer's array calculation factor rate and the
21 graduated social cost factor rate may not exceed six percent or, for
22 employers whose North American industry classification system code is
23 within "111," "112," "1141," "115," "3114," "3117," "42448," or
24 "49312," may not exceed five and four-tenths percent:

- 25 (I) Rate class 1 - 40 percent;
- 26 (II) Rate class 2 - 44 percent;
- 27 (III) Rate class 3 - 48 percent;
- 28 (IV) Rate class 4 - 52 percent;
- 29 (V) Rate class 5 - 56 percent;
- 30 (VI) Rate class 6 - 60 percent;
- 31 (VII) Rate class 7 - 64 percent;
- 32 (VIII) Rate class 8 - 68 percent;
- 33 (IX) Rate class 9 - 72 percent;
- 34 (X) Rate class 10 - 76 percent;
- 35 (XI) Rate class 11 - 80 percent;
- 36 (XII) Rate class 12 - 84 percent;
- 37 (XIII) Rate class 13 - 88 percent;
- 38 (XIV) Rate class 14 - 92 percent;

1 (XV) Rate class 15 - 96 percent;
2 (XVI) Rate class 16 - 100 percent;
3 (XVII) Rate class 17 - 104 percent;
4 (XVIII) Rate class 18 - 108 percent;
5 (XIX) Rate class 19 - 112 percent;
6 (XX) Rate class 20 - 116 percent; and
7 (XXI) Rate classes 21 through 40 - 120 percent.

8 (iii) For the purposes of this section:

9 (A) "Total social cost" means the amount calculated by subtracting
10 the array calculation factor contributions paid by all employers with
11 respect to the four consecutive calendar quarters immediately preceding
12 the computation date and paid to the employment security department by
13 the cut-off date from the total unemployment benefits paid to claimants
14 in the same four consecutive calendar quarters.

15 (B) "Total taxable payroll" means the total amount of wages subject
16 to tax, as determined under RCW 50.24.010, for all employers in the
17 four consecutive calendar quarters immediately preceding the
18 computation date and reported to the employment security department by
19 the cut-off date.

20 (c) For employers who do not meet the definition of "qualified
21 employer" by reason of failure to pay contributions when due:

22 (i) For rate years through 2010:

23 (A) The array calculation factor rate shall be two-tenths higher
24 than that in rate class 40, except employers who have an approved
25 agency-deferred payment contract by September 30th of the previous rate
26 year. If any employer with an approved agency-deferred payment
27 contract fails to make any one of the succeeding deferred payments or
28 fails to submit any succeeding tax report and payment in a timely
29 manner, the employer's tax rate shall immediately revert to an array
30 calculation factor rate two-tenths higher than that in rate class 40;
31 and

32 (B) The social cost factor rate shall be the social cost factor
33 rate assigned to rate class 40 under (b)(ii)(A) of this subsection.

34 (ii) For rate years 2011 and thereafter:

35 (A)(I) For an employer who does not enter into an approved agency-
36 deferred payment contract as described in (c)(ii)(A)(II) or (III) of
37 this subsection, the array calculation factor rate shall be the rate it

1 would have been if the employer had not been delinquent in payment plus
2 an additional one percent or, if the employer is delinquent in payment
3 for a second or more consecutive year, an additional two percent;

4 (II) For an employer who enters an approved agency-deferred payment
5 contract by September 30th of the previous rate year, the array
6 calculation factor rate shall be the rate it would have been if the
7 employer had not been delinquent in payment;

8 (III) For an employer who enters an approved agency-deferred
9 payment contract after September 30th of the previous rate year, but
10 within thirty days of the date the department sent its first tax rate
11 notice, the array calculation factor rate shall be the rate it would
12 have been had the employer not been delinquent in payment plus an
13 additional one-half of one percent or, if the employer is delinquent in
14 payment for a second or more consecutive year, an additional one and
15 one-half percent;

16 (IV) For an employer who enters an approved agency-deferred payment
17 contract as described in (c)(ii)(A)(II) or (III) of this subsection,
18 but who fails to make any one of the succeeding deferred payments or
19 fails to submit any succeeding tax report and payment in a timely
20 manner, the array calculation factor rate shall immediately revert to
21 the applicable array calculation factor rate under (c)(ii)(A)(I) of
22 this subsection; and

23 (B) The social cost factor rate shall be the social cost factor
24 rate assigned to rate class 40 for the relevant year under (b)(ii) (A)
25 or (B) of this subsection.

26 (d) For all other employers not qualified to be in the array:

27 (i) The array calculation factor rate shall be a rate equal to the
28 average industry array calculation factor rate as determined by the
29 commissioner, multiplied by the history factor, but not less than one
30 percent or more than the array calculation factor rate in rate class
31 40;

32 (ii) The social cost factor rate shall be a rate equal to the
33 average industry social cost factor rate as determined by the
34 commissioner, multiplied by the history factor, but not more than the
35 social cost factor rate assigned to rate class 40 for the relevant year
36 under (b)(ii) (A) or (B) of this subsection; and

37 (iii) The history factor shall be based on the total amounts of
38 benefits charged and contributions paid in the three fiscal years

1 ending prior to the computation date by employers not qualified to be
 2 in the array, other than employers in (c) of this subsection, who were
 3 first subject to contributions in the calendar year ending three years
 4 prior to the computation date. The commissioner shall calculate the
 5 history ratio by dividing the total amount of benefits charged by the
 6 total amount of contributions paid in this three-year period by these
 7 employers. The division shall be carried to the second decimal place
 8 with the remaining fraction disregarded unless it amounts to five
 9 one-hundredths or more, in which case the second decimal place shall be
 10 rounded to the next higher digit. The commissioner shall determine the
 11 history factor according to the history ratio as follows:

	History		History
	Ratio		Factor
			(percent)
	At least	Less than	
16 (A)		.95	90
17 (B)	.95	1.05	100
18 (C)	1.05		115

19 (3) Assignment of employers by the commissioner to industrial
 20 classification, for purposes of this section, shall be in accordance
 21 with established classification practices found in the North American
 22 industry classification system code.

23 NEW SECTION. **Sec. 4.** If any part of this act is found to be in
 24 conflict with federal requirements that are a prescribed condition to
 25 the allocation of federal funds to the state or the eligibility of
 26 employers in this state for federal unemployment tax credits, the
 27 conflicting part of this act is inoperative solely to the extent of the
 28 conflict, and the finding or determination does not affect the
 29 operation of the remainder of this act. Rules adopted under this act
 30 must meet federal requirements that are a necessary condition to the
 31 receipt of federal funds by the state or the granting of federal
 32 unemployment tax credits to employers in this state.

1 NEW SECTION. **Sec. 5.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 immediately.

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