

# HOUSE BILL REPORT

## ESHB 2947

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### As Passed Legislature

**Title:** An act relating to unemployment compensation for part-time faculty.

**Brief Description:** Revising unemployment compensation for part-time faculty.

**Sponsors:** By House Committee on Commerce & Labor (originally sponsored by Representatives McMorris, Conway, Carlson, Kenney, Costa, Wood, Ogden and Gardner; by request of Employment Security Department).

**Brief History:**

**Committee Activity:**

Commerce & Labor: 2/2/98, 2/5/98 [DPS].

**Floor Activity:**

Passed House: 3/3/98, 88-0.

Passed Legislature.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements; Hatfield and Lisk.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; and Cole.

**Staff:** Pam Madson (786-7166).

**Background:** Under the Federal Unemployment Tax Act (FUTA), if a state maintains an unemployment insurance system in conformity with federal law, that state's employers receive a tax credit against their federal unemployment tax of 90 percent of the federal tax. In addition, the conforming state receives a share of the FUTA revenues for administration of its unemployment insurance system.

One of the requirements of federal law addresses unemployment benefits for certain public and nonprofit educational institutions' employees. Unemployment compensation may not be paid to these employees for unemployment that occurs between two successive academic years or terms if the employee has reasonable assurance that he or she will be re-employed for the same services in the next academic year or term.

"Reasonable assurance" is defined as a written, verbal, or implied agreement that the employee will be re-employed in the same capacity. Until 1995, Washington's unemployment insurance statutes included language that was the same as federal law.

In 1994, the Washington Court of Appeals held that, in view of the state's failure to show that summer quarter was qualitatively different from other academic terms and with no indication that the Legislature intended summer quarters to be "off" quarters, unemployment benefits could not be denied during the summer for a part-time community college faculty member who was not offered a position during the summer quarter. Following that decision, the U.S. Department of Labor (USDOL) advised the Employment Security Department that the court's opinion raised a federal conformity issue.

The following year, legislation was enacted that amended the requirements for unemployment insurance determinations involving part time faculties at community colleges and technical colleges. For these faculties, the definition of "academic year" means fall, winter, spring, and summer quarters or comparable semesters, unless objective criteria, including enrollment and staffing, show that the term is not in fact part of the educational institution's academic year.

For determining eligibility for benefits between successive academic years or terms for these part time faculties, the 1995 law provides that "reasonable assurance" does not include an agreement to provide services when the agreement is contingent on enrollment, funding, or program changes.

The USDOL has again advised the Employment Security Department that this legislation raises a federal conformity issue because the law does not apply the same provisions to all educational employees. The Secretary of Labor has notified the Employment Security Department that she is commencing conformity proceedings against the state of Washington. The Employment Security Department has requested a hearing on this matter.

**Summary of Bill:** The Legislature recognizes the need to bring the state's unemployment compensation law into conformity with federal law, and recognizes that there are instructional staff at the state's educational institutions that have less assurance of returning to employment in an ensuing academic year or term than others. The Legislature declares its intent that the Employment Security Department continue to handle determinations of eligibility for unemployment compensation in cases involving a finding of reasonable assurance on a case by case basis consistent with federal guidelines and to consider contingencies that exist in each individual case. The Legislature further declares that removing reference to contingent agreements is not intended to change the practice of the Employment Security Department when determining reasonable assurance.

The definition of "academic year" includes summer quarter or semester as part of the academic year unless, based on objective criteria, the summer quarter or semester is in fact not part of the academic year for the particular institution. This definition applies to all educational employees.

The provision is deleted that defines "reasonable assurance" as not including agreements that are contingent on funding, enrollment or program changes.

A previously enacted but uncodified intent statement is repealed.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill is necessary to prevent the loss of a tax credit to employers in Washington. The estimated cost is \$872 million. The state may also lose around \$80 million that the state receives to administer the state unemployment insurance program. There is a severability clause in the law that may allow provisions of state law to be declared inoperative. This clause cannot take effect until after the hearing process to determine if the state is out of conformity with federal law. It is important that the bill validates the Evans decision that said summer term is part of the academic year unless it is proven not to be. The bill would need to be amended.

**Testimony Against:** None.

**Testified:** (In favor) Dale Zeigler, Employment Security Department; Jeff Johnson, Washington State Labor Council; Harold Abbey, Association of Washington Pulp and Paper Workers.