

HOUSE BILL REPORT

HB 2947

As Reported By House Committee On:

Commerce & Labor

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

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

Sponsors: 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].

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 Substitute Bill: 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.

Substitute Bill Compared to Original Bill: Summer quarter or semester is included in, rather than excluded from, the definition of academic year unless, based on objective criteria, summer quarter or semester is not in fact part of the academic year. Language is deleted that defines reasonable assurance as not including an agreement that is contingent on enrollment, funding or program changes.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: 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.