

HOUSE BILL REPORT

SSB 5963

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to unemployment insurance.

Brief Description: Regarding unemployment insurance.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, Holmquist, King, Honeyford, Keiser, Franklin, Kline, Hewitt, Marr, Parlette, McCaslin, Schoesler and Morton).

Brief History:

Committee Activity:

Commerce & Labor: 3/18/09, 3/27/09 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House)**

- Provides that an individual has good cause and is not disqualified from benefits if continuing in employment would work an unreasonable hardship on the individual, and modifies the "quit to follow" provision.
- Increases the multiplier used to calculate an individual's weekly benefit amount from 3.85 percent to 4 percent for certain claims.
- Specifies that the "pay at two, charge at four" provision does not apply for rate year 2010 and thereafter.
- Reduces most contribution rates paid by qualified employers.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler and Crouse.

Staff: Jill Reinmuth (786-7134)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

The unemployment compensation system is designed and intended to provide partial wage replacement for workers who are unemployed through no fault of their own. Eligible unemployed workers receive benefits based on their earnings in their base year. Most covered employers pay contributions (payroll taxes) to finance benefits. The Employment Security Department administers this system.

Voluntary Quits.

An individual is eligible to receive regular unemployment insurance benefits if he or she: (1) worked at least 680 hours in his or her base year; (2) was separated from employment through no fault of his or her own, or quit work for reasons listed in state law or for good cause; and (3) is able to work and is actively searching for work.

An individual is not disqualified from benefits if he or she quit work for one of 11 reasons listed in state law, including relocating for the spouse's mandatory military transfer. This reason for leaving work is commonly referred to as "quit to follow."

An individual also is not disqualified if he or she quit work for good cause. Pursuant to the Washington Supreme Court's decision in *Spain v. Employment Security Department* (consolidated with *Batey v. Employment Security Department*), the Commissioner of the Employment Security Department has discretion to find that reasons not listed in state law are good cause for leaving work.

Benefit Amounts.

The maximum amount of regular benefits payable in an individual's benefit year is the lesser of 26 times the individual's weekly benefit amount or one-third of the individual's base year wages. (This amount is commonly expressed in terms of duration. In those terms, the maximum duration of regular benefits is 26 weeks.)

An individual's weekly benefit amount is 3.85 percent of the average of the individual's wages in the two quarters of the base year in which wages were highest. Under the state Economic Security Act of 2009, an additional \$45 is added to an individual's weekly benefit amount for certain weeks of benefits for certain claims with an effective date before January 3, 2010.

The maximum amount payable weekly is 63 percent of the average weekly wage. The minimum amount payable weekly is 15 percent of the average weekly wage. As of July 1, 2008, the maximum amount is \$541 and the minimum amount is \$129. Under the state Economic Security Act of 2009, the minimum amount is \$155 for certain weeks of benefits for certain claims with an effective date before January 3, 2010.

Federal Stimulus Act.

The federal American Recovery and Reinvestment Act of 2009 provides up to \$7 billion for modernization incentive payments to states that meet certain requirements. One-third of the

incentive payment is contingent on state law providing for an alternative base period. Two-thirds is contingent on state law providing for at least two of the following:

- no denial of benefits to part-time workers seeking only part-time work;
- no disqualification from benefits for separating from employment for compelling family reasons, including domestic violence, an immediate family member's illness or disability, and the need to accompany a spouse to a place from which it is impractical to commute due to a change in the location of the spouse's employment;
- continuation of weekly benefits for exhaustees in state-approved training; or
- dependents' allowances of at least \$15 per dependent per week.

Experience Rating.

An employer's layoff experience is measured by the amount of benefits charged to the employer's account. Benefits are paid based on the individual's wages in the two quarters of the base year in which wages were highest ("two-quarter averaging"). The difference between benefits paid to an individual and benefits that would have been paid based on the individual's wages in all four quarters of the base year ("four-quarter averaging") is noncharged. This provision is generally referred to as "pay at two, charge at four."

In 2006 the federal Department of Labor informed the state Employment Security Department that the "pay at two, charge at four" provision is out of conformity with the federal law that requires tax rates to reflect benefit payments. Without certification from the federal Secretary of Labor that state law conforms to federal law, employers may not receive certain federal unemployment tax credits.

Tax Rates.

An employer's contribution rate includes an experience rated factor, a social cost factor, and when the balance in the unemployment insurance trust fund meets certain conditions, a solvency surcharge. (There is currently no solvency surcharge.)

The experience rated factor (or "array calculation factor") is based on the employer's rate class. An employer is assigned to one of 40 rate classes depending on the employer's layoff experience. For rate classes 1 and 40, the rates are 0.00 percent and 5.40 percent. For rate classes 2 through 39, the rates range from 0.13 percent to 5.35 percent.

The social cost factor is a percentage of costs not directly charged to an employer. A flat rate is calculated as the difference between benefits paid and taxes paid, divided by total taxable payroll. The flat rate is then adjusted for months of benefits in the trust fund as follows:

<u>Months of Benefits</u>		<u>Minimum Flat Rate</u>
<u>At Least</u>	<u>Less Than</u>	
	12	0.6 percent

12	14	0.5 percent
14		0.45 for rate class 1, and 0.5 for other rate classes

A graduated rate, ranging from 78 percent to 120 percent of the flat rate, is based on the employer's rate class.

The sum of the experience rated factor and the social cost factor may not exceed 6.5 percent. This sum is capped at 5.7 percent for certain seasonal industries (agricultural crops, livestock, agricultural services, food and seafood processing, fishing, and cold storage).

Summary of Amended Bill:

Certain provisions of the employment compensation system are modified, including voluntary quits, benefit amounts, experience rating, and tax rates.

Voluntary Quits.

An individual has good cause and is not disqualified from benefits only if he or she quit work for one of 12 reasons listed in state law.

The reason commonly referred to as "quit-to-follow" is modified. An individual is not disqualified from receiving benefits if the individual leaves work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move.

The twelfth reason is that continuing in employment would work an unreasonable hardship on the individual. "Unreasonable hardship" means a result not due to an individual's voluntary action that would cause a reasonable person to leave employment. The individual must show that he or she left work primarily for reasons connected with employment, the work-connected reasons were of such a compelling nature they would have caused a reasonably prudent person to leave work, and the individual exhausted all reasonable alternatives, unless those alternatives would have been futile.

Benefit Amounts.

The multiplier used to calculate an individual's weekly benefit amount is increased from 3.85 percent to 4 percent for claims with an effective date on or after January 3, 2010. However, for claims with an effective date before January 3, 2016, the multiplier is 3.85 percent if additional compensation is payable under the federal American Recovery and Reinvestment Act of 2009, the state Economic Security Act of 2009, or substantially similar laws, or if the balance in the trust fund is an amount that will provide fewer than eight months of benefits.

Experience Rating.

The "pay at two, charge at four" provision does not apply to the calculation of contribution rates for rate year 2010 and thereafter. As a result, benefits are paid to claimants and charged to employers using two-quarter averaging.

Tax Rates.

The experience rated factor (or "array calculation factor") is reduced for most rate classes for rate year 2010 and thereafter. For rate classes 1 and 40, the rates remain at 0.00 percent and 5.40 percent. For rate classes 2 through 39, the rates are reduced by .02 percent to .05 percent, resulting in rates from 0.11 percent to 5.30 percent.

The flat social cost factor rate is adjusted for months of benefits in the trust fund as follows:

<u>Months of Benefits</u>		<u>Minimum Flat Rate</u>
<u>At Least</u>	<u>Less Than</u>	
	10	0.6 percent
10	11	0.5 percent
11	12	0.45 percent
12	13	0.4 percent
13	15	0.35 percent
15	17	0.25 percent
17	18	0.15 percent
18		0.15 percent through 2011, and zero thereafter

The cap on the sum of the experience rated factor and the social cost factor is reduced to 6.0 percent. The cap on the sum for certain seasonal industries (agricultural crops, livestock, agricultural services, food and seafood processing, fishing, and cold storage) is reduced to 5.4 percent.

Obsolete provisions are deleted.

Amended Bill Compared to Original Bill:

The voluntary quit provision is modified to provide that an individual has good cause and is not disqualified from benefits if continuing in employment would work an unreasonable hardship on the individual.

The multiplier used to calculate an individual's weekly benefit amount is increased from 3.85 percent to 4 percent for certain claims.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 27, 2009.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill reflects 10 months of work by the employer community. It protects the long-term health of the unemployment insurance trust fund. When the employer community began its discussions, the economy was healthy. Now the business climate has changed. The amount of tax relief has dropped from \$80 million to \$13 million in 2010. However, the employer community still supports this proposal.

This bill returns Washington to conformity, which is important for preserving tax credits. It also mitigates the change from four quarters to two quarters for employers. (Otherwise, the change would result in a substantial tax increase to the business community.) It reduces the reserve to an appropriate level as the economy improves. Finally, it recodifies the prior agreement on voluntary quits that the court undid.

This system has overtaxed employers. Employers pay the second highest taxes to finance the fifth highest benefits in the country. If the multiplier is increased, employer taxes will increase in years in which we hope to be in economic recovery. Maintaining federal tax credits should be characterized as avoiding a tax increase, not as a tax savings.

Please move this legislation forward quickly without additional changes.

(In support with amendment) It is essential that this bill be passed and signed into law. This bill is needed to bring our state into conformity with federal law. It specifies that benefits are paid and charged in the same way, and that brings the system into conformity.

This bill permanently reduces tax rates. These reductions are fine because Washington has the most robust unemployment insurance system in the country.

However, a couple of amendments should be adopted. One Senate floor amendment dealt with voluntary quits. Another floor amendment dealt with the multiplier. Adopting these amendments would make the bill balanced.

(Information only) The balance in the trust fund is currently \$3.7 billion, which provides for between 19 and 20 months of benefits. The conformity provision is responsible.

(Opposed) This bill drains the trust fund with permanent tax decreases and without permanent benefit increases. It saves business millions with just the conformity changes, and more with the tax cuts. Given the magnitude of the recession, the trust fund should not be drained.

The bill does not recognize how much workers have lost in benefits. Millions were lost due to three- and four-quarter averaging, lowering the multiplier, and reducing the duration. The stimulus bill pumped money into the economy through temporary benefits, but did not address what the system looks like at the other end of the recession.

The bill could be amended to be acceptable. These changes will make the system more fair and equitable.

The multiplier should be increased from 3.85 to 4 percent. The increased multiplier would result in a wage replacement rate of 50 percent that is consistent with federal guidelines.

The Commissioner's discretion to recognize good cause quits should be retained. There are many different reasons why people leave employment. There would not be a floodgate of people quitting employment. It should be a good cause quit if an individual accepts a job outside the labor market, and then the individual's work hours or family situation changes such that the individual can no longer commute.

This bill is economically counter-productive. Individuals who do not receive unemployment benefits will turn to other sources of assistance.

Persons Testifying: (In support) Trent House, Boeing; Nancy Hiteshue, Washington Roundtable; Donna Steward, Association of Washington Business; and Troy Nichols, National Federation of Independent Business.

(In support with amendment) Senator Kohl-Welles, prime sponsor.

(Information only) Karen Lee, Employment Security Department.

(Opposed) Rebecca Johnson and Jeff Johnson, Washington State Labor Council; Dave Johnson, Washington State Building and Construction Trades Council; Bob Abbott, Washington and Northern Idaho District Council of Laborers; Marc Lampson, Unemployment Law Project; D. Jill Pugh, Law Office of D. Jill Pugh and Unemployment Law Project; Andrea Scheele, Teller and Associates, PLLC; and Martha Schmidt, United Professionals.

Persons Signed In To Testify But Not Testifying: None.