HOUSE BILL REPORT
HB 1091

As Reported by House Committee On:
Labor & Workforce Development

Title: An act relating to modifying the unemployment insurance program.

Brief Description: Modifying the unemployment insurance program.

Sponsors: Representatives Sells, Reykdal and Kenney; by request of Governor Gregoire.

Brief History:
Committee Activity:
Labor & Workforce Development: 1/14/11, 1/21/11 [DPS].

Brief Summary of Substitute Bill

- Establishes caps on the flat social rate and reduces the multipliers used for certain graduated social rates for rate year 2011 and thereafter.
- Makes changes to the extended benefits program, including a three-year look-back period, for 2011.
- Adds dependents' allowances of $15 per dependent (but not more then $50 for all dependents) to individual weekly benefit amounts for claims on or after August 12, 2012.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Kenney, Miloscia, Moeller, Ormsby and Roberts.

Minority Report: Do not pass. Signed by 5 members: Representatives Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan, Taylor and Warnick.

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. Most covered employers pay contributions (taxes) to finance benefits. Eligible unemployed workers receive benefits based on their earnings in their base year. The Employment Security Department (Department) administers this system.

1. Taxes.

An employer's taxes are based on the tax rate assigned to the employer and the taxable wage base. The tax 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 one and 40, the rates are 0.00 percent and 5.40 percent, respectively. For rate classes two through 39, the rates range from 0.11 percent to 5.30 percent.

The social cost factor is a percentage of costs not directly charged to an employer. First, a flat rate is calculated as the difference between benefits paid and taxes paid, divided by total taxable payroll. The flat rate is adjusted for months of benefits in the unemployment insurance trust fund. (For rate year 2010, the flat rate was 1.22 percent. For rate year 2011, the flat rate is calculated to be 1.70 percent.) Then, multipliers are used to calculate graduated rates. For rate classes one through 11, the multipliers range from 78 percent to 118 percent, respectively. For rate classes 12 through 40, the multiplier is 120 percent.

The tax rate is the sum of the experience rated factor and the social cost factor, and may not exceed 6.0 percent. The tax rate is capped at 5.4 percent for certain seasonal industries (agricultural crops, livestock, agricultural services, food and seafood processing, fishing, and cold storage).

2. Benefits.

a. Benefit amounts.

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. No dependents' allowances are added to the weekly benefit amount.

The maximum amount payable weekly is 63 percent of the state average weekly wage. The minimum amount payable weekly is 15 percent of the average weekly wage. As of July 1, 2010, the maximum amount is $570 and the minimum amount is $135.

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.)

b. Modernization incentive payment.

As part of the federal American Recovery and Reinvestment Act of 2009 (ARRA), Congress approved up to $7 billion in special transfers or "modernization incentive payments" to states with unemployment insurance laws that meet certain requirements.

One-third of the payment is contingent on state law providing for an alternative base period. Washington has already received the one-third payment (approximately $49 million).

Two-thirds of the payment is contingent on state law providing for at least two of the following:

- No disqualification from benefits for voluntarily quitting employment for compelling family reasons.
- No denial of benefits to part-time workers seeking only part-time work.
- Continuation of weekly benefits for exhaustees in state-approved training.
- Dependents' allowances of at least $15 per dependent per week.

Washington has not yet qualified to receive the remaining two-thirds payment (approximately $98 million).

The deadline by which states must apply to receive the payment is August 22, 2011.

c. Extended benefits.

During periods of high unemployment, the extended benefits program may provide additional weeks of benefits to individuals who have exhausted other benefits. The indicators of high unemployment are based on the current unemployment rate and how it compares to unemployment rates during a two-year look-back period. The federal Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the 2010 Act) authorizes states to use a three-year look-back period in place of the two-year look-back period through 2011.

One indicator used to determine whether extended benefits are payable is based on the seasonally adjusted total unemployment rate (SATUR). If the SATUR is at least 6.5 percent for the most recent three months and at least 110 percent of the SATUR for the same period in either of the two preceding calendar years, extended benefits are payable. (Based on this indicator, up to 13 weeks of extended benefits were payable beginning in February 2009. Another indicator made up to seven additional weeks of extended benefits payable beginning in May 2009, for a total of up to 20 weeks.)

The federal government and the state usually split the cost of extended benefits. The federal government began paying the full cost of extended benefits pursuant to the ARRA, and will continue doing so through 2011 pursuant to the 2010 Act.

For an individual who is in the training benefits program, training benefits are payable for up to two years beyond the end of the benefit year of the regular claim.

For an individual who is eligible for emergency unemployment compensation, the eligibility period for extended benefits is defined as the period consisting of the week ending February 28, 2009, through the week ending May 29, 2010. The 2010 Act authorizes states to continue to permit an individual to qualify for extended benefits after exhausting emergency unemployment compensation, and for the eligibility period to continue through 2011.

Summary of Substitute Bill:

1. Taxes.

The formulas used to calculate the social cost factor are changed for rate year 2011 and thereafter.

For rate classes one through 20, the flat rate is capped. If there are more than 10 months of benefits in the trust fund, the cap is 1.22 percent. If there are 10 months of benefits or less in the trust fund, the cap is 1.22 percent or 150 percent of the previous year's flat rate, whichever is greater. Also, the multipliers used to calculate the graduated rates are reduced. The range is 40 percent to 116 percent of the flat rate (instead of from 78 percent to 120 percent).

For rate classes 21 through 40, the flat rate is capped in the same manner as for other rate classes. The graduated rate continues to be 120 percent of the flat rate.

2. Benefits.

a. Dependents' allowances.

A dependents' allowance is added to an individual's weekly benefit amount. The amount of the dependents' allowance is $15 per dependent, but not more than $50 for all dependents. Corresponding increases are made to the minimum and maximum amounts payable weekly and the maximum amount of regular benefits payable (maximum duration). Dependents' allowances are added to claims with an effective date on or after August 19, 2012.

A "dependent" is defined as a child who is:

- under 18 years old;
- 18 years old or older and incapable of earning wages because of mental or physical incapacity; or
- under 24 years old and enrolled full-time in a school or job-training program.

The dependent must have lived with the individual or have been reliant on the individual for financial support for at least 90 consecutive days immediately before the individual filed his or her claim. The individual must certify the number of qualified dependents.

The Commissioner of the Employment Security Department (Department) must periodically examine samples and verify that dependents are accurately reported. The Commissioner of the Department also must adopt rules to implement dependents' allowance.

b. Extended benefits.

The look-back period for indicators of high unemployment used to determine whether extended benefits are payable is changed for 2011. A three-year look-back period may be used instead of the two-year look-back period.

The period during which training benefits are payable is extended. For individuals who are eligible for extended benefits because of the three-year look-back period, training benefits are payable for up to three years beyond the end of the benefit year of the regular claim.

The eligibility period for extended benefits is also extended through 2011. The eligibility period consists of the week ending February 28, 2009, and applies as provided under the federal Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, as it existed on December 17, 2010, or a subsequent date provided by the Department by rule.

Substitute Bill Compared to Original Bill:

Sections relating to training benefits are omitted. Sections relating to extended benefits and dependents' allowances are added.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains multiple effective dates. Sections 1 and 2, relating to extended benefits, and sections 5 through 7, relating to the social cost factor, contain an emergency clause and take effect immediately. Sections 3 and 4, relating to dependents' allowances, take effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The state has a unique opportunity to help businesses create and retain jobs and help workers get back to work without risking the solvency of the Unemployment Insurance Trust Fund. It will help folks weather the economy.

The bill results in tax cuts for employers. Ninety percent would pay lower rates in 2011 than under current law. About half would pay lower rates in 2011 than in 2010. If passed before February 8, 2011, employers will save $300 million in 2011 and about $352 million from 2011 to 2017.

The bill helps unemployed workers access training and also helps the state gain $98 million in federal funding. It also socializes the costs of training benefits from the point that the participant's application is approved. There would be about 2,000 more participants per year, and increased costs of about $20 million per year.

Employers are facing an average tax increase of 36 percent. Some are seeing increases of 200 to 400 percent. The bill smoothes significant increases in tax rates, and includes a mechanism to avoid a snap back. It provides immediate tax relief and fine-tunes the system. It will help preserve jobs and help employers hire.

The bill includes changes to the training benefits program. It should be revised to require a review in two years and to ensure that training is for high-demand occupations. There is reluctant support for training benefits because it adds cost to the system. There are some positive impacts for employers, such as having a skilled workforce as the state emerges from the recession.

The food industry supports the long-term changes to the tax schedule. It is neutral on expansion of training benefits, so long as the trust fund balance does not drop below 10 months of benefits. It does not support socializing the costs of training benefits. There are many industries that will not benefit from training benefits, and should not have to pay for them.

The restaurant industry can support the bill with the addition of two levels of accountability added to the bill. First, there should be annual monitoring and tracking of performance. Also, if the Employment Security Department's estimate of $20 million is exceeded, there needs to be a higher level review with the Legislature or some external body.

If the bill does not pass, taxes will go up dramatically. There should be one bill that moves forward, not just for this year, but for future years.

(Opposed) Small business opposes the bill. Training benefits are a poison pill in an otherwise excellent proposal. It results in a permanent increase in benefits of $20 million per year in exchange for a one-time payment of $98 million. Over time, it will cost more in tax dollars than what is captured in federal dollars. Training benefits should be pulled out of the bill.

The bill is not the best path forward to economic recovery. It provides a permanent tax savings for employers, but very little for working families. The Legislature has a choice between one proposal that helps 2,000 people access training and one that helps over 167,000 families provide food and housing.

A more balanced approach is needed. Tax relief should be combined with dependents' allowances that provide help for struggling families. With cuts to basic health and the disability lifeline, the dependents' allowance is an opportunity to protect the safety net. This may be the only opportunity to do something positive for kids and families this session.

Workers are in dire straits. Hundreds of ironworkers are out of work, and that does not include those who are working part-time. Pulp and paper workers are facing severe layoffs and plant closures. Electrical workers are facing historic levels of unemployment. Nearly half of them have children, and 10 percent are single parents. They are struggling to keep their homes and provide food for their children. Workers need a little relief.

Training benefits will not help. Training is not accessible because the community colleges are full. Benefits do not cover tuition, books, and other expenses.

The children's lifeline would provide $15 per week per child. It does not sound like much, but when you are struggling, it is a big deal.

Dependents' allowances would go straight into our local communities to pay rent and buy groceries. For every $1 in benefits paid, there is a $2 return in the community.

Combined with tax relief for businesses, the children's lifeline would do the most for the most people. It would help 10 times the number of working families than House Bill 1091 helps.

The dependents' allowance qualifies the state for the federal modernization incentive payment. There are 13 other states that provide dependents' allowances.

One reason the trust fund is so flush is because so many benefits were taken away. A dependents' allowance of $15 per week is miniscule in terms of what was lost.

Persons Testifying: (In support) Peter Bogdanoff, Office of the Governor; Paul Trause, Employment Security Department; Donna Steward, Association of Washington Business; Nancy Hiteshue, Washington Roundtable; Van Collins, Associated General Contractors of Washington; Jan Gee, Washington Food Industry Association; Gary Smith, Independent Business Association; and Bruce Beckett, Washington Restaurant Association.

(Opposed) Rebecca Johnson, Washington State Labor Council; Lonnie Johns-Brown, National Organization for Women; Jodi Howson, International Brotherhood of Electrical Workers Local 191; Marsha Milroy; Patrick Connor, National Federation of Independent Business; Wendy Rader-Konofalski, Washington Education Association; Dave Johnson, Washington State Building and Construction Trades Council; James Maund, Hod Carriers and General Laborers Local 242; Larry Brown, International Association of Machinists and Aerospace Workers Local 751; Sarah Cherin, United Food and Commercial Workers Local 21; Don DeMulling, Ironworkers Local 86; Sean O'Sullivan, Association of Washington Pulp and Paper Workers; Steven Johnson; and Randy Loomans, International Brotherhood of Operating Engineers Local 302.

Persons Signed In To Testify But Not Testifying: None.