HOUSE BILL REPORT
EHB 1091

As Passed Legislature

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].
Floor Activity:
Passed House: 2/9/11, 98-0.
Passed Senate: 2/11/11, 41-4.
Passed Legislature.

Brief Summary of Engrossed Bill

- Establishes caps on the flat social rate and reduces the multipliers used for certain graduated social rates.
- Provides for a temporary benefit increase by adding $25 to the weekly benefit amount, and noncharging the additional $25.
- Makes changes to training benefits, including expanding the definition of "dislocated worker," eliminating certain deadlines and requirements for dislocated workers, and modifying the funding cap for training benefits.
- Makes changes to extended benefits, including a three-year look-back period.

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).

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. <u>Taxes</u>.

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 (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. 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 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. 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. <u>Benefits</u>.

a. <u>Benefit amounts</u>.

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.

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. Training benefits.

The training benefits program allows an eligible individual to receive additional benefits while he or she is in retraining. The following individuals who are unemployed may be eligible to receive training benefits: dislocated workers; low-wage workers; military personnel and National Guard members; and persons who are disabled.

A dislocated worker is defined as an individual who: (1) has been terminated or received a notice of termination from employment; (2) is unlikely to return to employment in his or her principal occupation or previous industry because of a diminishing demand for his or her skills; and (3) is eligible for or has exhausted benefits.

The individual must submit a training plan to the Department within 90 days of the individual's notification of the program's requirements, and must enter the approved training program within 120 days (unless these deadlines are waived for good cause). The individual must be enrolled in training on a full-time basis (except when a disability precludes such enrollment).

The training must target a high demand occupation and may include vocational training or courses needed as a prerequisite to that training. The training may not include courses primarily intended for completion of a baccalaureate degree.

An individual may qualify for this program only once every five years. The Department must verify that an individual is eligible to work in the United States before the individual receives training benefits.

The maximum amount of training benefits payable in an individual's benefit year is 52 times the individual's weekly benefit amount (less weeks of regular benefits and extended benefits paid).

The weekly benefit amount is the same as the amount the individual receives as regular benefits. The amount is reduced if the individual receives any "remuneration" in the week. The reduction is based on a statutory formula (75 percent of the amount of the remuneration in excess of $5).

Training benefits are subject to available funding from the Trust Fund. Funding is capped at $20 million for each fiscal year. Any funds not obligated in one fiscal year may be carried forward to the next fiscal year. Training benefits are not charged to the experience rating accounts of employers.

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.

d. 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 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 Engrossed 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 Unemployment Insurance Trust Fund (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. Temporary benefit increase.

An additional $25 is added to an individual's weekly benefit amount. Corresponding increases are made to the maximum amount of regular benefits payable (maximum duration), the maximum amount payable weekly, and the minimum amount payable weekly.

The temporary benefit increase is applicable to claims with an effective date on or after March 6, 2011, and before November 6, 2011. Except for individuals receiving extended unemployment compensation or extended benefits, the temporary benefit increase is not added in any week after the total amount of temporary benefit increases for all weeks equals $68 million. Weeks of emergency unemployment compensation and extended benefits are not considered in calculating the total amount.

During the two-year period consisting of Fiscal Years 2012 and 2013, a total amount equal to the total amount of temporary benefit increases is requisitioned first from the Trust Fund, if the Modernization Incentive Payment is credited to the Trust Fund.

The temporary benefit increase is not charged to the experience rating accounts of employers, and is not considered when calculating the flat social cost factor rate. It also does not count when determining eligibility for Apple Health for Kids, the Basic Health Plan, and Working Connections Child Care.

b. Training benefits.

The training benefits program is modified for claims on or after July 1, 2012.

The definition of "dislocated worker" is expanded. A dislocated worker is an individual who: (1) has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment, or has separated from a declining occupation; and (2) is eligible for or has exhausted benefits.

For dislocated workers, certain deadlines and requirements are eliminated. These are: the 90-day application deadline and the 120-day enrollment deadline; the full-time enrollment requirement; and the five-year limitation on qualifying for training benefits. The requirement that the Employment Security Department (Department) verify employment eligibility is continued.

The maximum amount of training benefits payable is modified. The maximum amount is reduced only by weeks of regular benefits (instead of regular benefits and extended benefits).

The reduction to an individual's weekly benefit amount for any remuneration in the week is changed. The reduction is 50 percent (instead of 75 percent) of the remuneration in excess of $5.

The cap on funding for training benefits is modified. Funding continues to be limited to $20 million per fiscal year, in addition to any funds carried forward from previous fiscal years. However, if available funding is equal to or less than $5 million, training benefits are not obligated for low-wage workers, military personnel and National Guard members, and persons who are disabled. If funds are exhausted, training benefits are obligated to dislocated workers only, and available funding for the following year is reduced by a corresponding amount.

Upon approval of an individual's training benefits plan, regular benefits are not charged to the experience rating accounts of employers.

The Department is required to include the following in annual program reports:

- assessments of employment outcomes;
- an analysis of whether training leads to employment in high-demand occupations, whether degrees or certificates are required to obtain employment, and the number of participants who take courses in basic language, reading, or writing skills;
- an analysis of the type of work participants were engaged in prior to unemployment, and whether they return to their previous employer within two years, or are employed in a field for which they were retrained;
- a projection of program costs for the next fiscal year; and
- an analysis of the total funds obligated for training benefits and the net balance remaining to be obligated.

The Joint Legislative Audit and Review Committee (JLARC) is required to review and evaluate the training benefits program in three years and every five years thereafter, as well as in any year in which the Department suspends obligation of training benefit funds or total expenditures exceed $25 million. The JLARC must:

- assess whether the program complies with legislative intent, is effective, and operates in a manner which results in optimum performance; and
- make recommendations on program improvements.

After a JLARC review is completed, legislative committees must hold public hearings and consider changes.

c. 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.

3. Other.

The Commissioner of the Department is given authority and discretion to make determinations to remedy any conflicts with federal requirements.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains multiple effective dates. The following contain an emergency clause and take effect immediately: sections 1 through 4 and 17 through 19, relating to temporary benefit increases; sections 5 and 6, relating to extended benefits; and section 16, relating to the social cost factor. Sections 7 through 15, relating to the training benefits program, take effect July 1, 2012, unless the U.S. Department of Labor determines by October 1, 2011, that the changes do not meet the requirements for unemployment insurance modernization incentive funding.

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 (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.