

SENATE BILL REPORT

SB 6216

As Reported by Senate Committee On:
Labor & Commerce, February 3, 2020

Title: An act relating to the application of the family and medical leave program in Title 50A RCW to specific classes of individuals.

Brief Description: Concerning the application of the family and medical leave program in Title 50A RCW to specific classes of individuals.

Sponsors: Senators Keiser, Conway, Hunt, Van De Wege and Saldaña.

Brief History:

Committee Activity: Labor & Commerce: 1/20/20, 2/03/20 [DPS, DNP, w/oRec].

Brief Summary of First Substitute Bill

- Exempts several classes of individuals from the definition of employment the purposes of the paid family and medical leave (PFML) program.
- Repeals the PFML waiver that exempted certain collective bargaining agreements from coverage until the agreement expires, is reopened, or renegotiated by the parties.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 6216 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senator Walsh.

Staff: Richard Rodger (786-7461)

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: Paid Family and Medical Leave Program. In 2017, a PFML program was enacted to provide partial wage replacement to employees on leave for specified family and medical reasons. Employees are eligible for benefits after working at least 820 hours in a qualifying period. Premium collection began January 1, 2019, and benefits are payable beginning January 1, 2020. "Employees" include those individuals who are in the employment of an employer, with the exception of employees of the United States. "Employment" includes the personal services provided to an employer, when performed in Washington State. There are several classes of individuals who are excluded from the term employment, such as self-employed individuals.

Collective Bargaining Agreements. The PFML program exempts certain employees covered under collective bargaining agreements from coverage until the agreement expires, is reopened, or is renegotiated.

Boards and Commissions. Members of board and commissions are divided into five categories, each with their own special provisions. The boards are designated as follows:

1. Class one—for any part-time board, commission, council, committee, or other similar group which is established by the executive, legislative, or judicial branch to participate in state government and which functions primarily in an advisory, coordinating, or planning capacity. Members do not receive any per diem.
2. Class two—for certain agricultural commodity boards or commissions. These members may receive up to \$100 per day.
3. Class three—for any part-time, statutory board, commission, council, committee, or other similar group which has rule-making authority, performs quasi-judicial functions, has responsibility for the administration or policy direction of a state agency or program, or performs regulatory or licensing functions with respect to a specific profession, occupation, business, or industry. Members may receive up to \$50 per day.
4. Class four—for certain other part-time, statutory boards, commissions, councils, committees, or other similar groups. Members may receive up to \$50 per day.
5. Class five—for any part-time commission that has rule-making authority, performs quasi-judicial functions, has responsibility for the policy direction of a health profession credentialing program, and performs regulatory and licensing functions with respect to certain health care professions. Members may receive up to \$250 per day.

Fire Protection Districts. Fire protection districts are created to provide fire and emergency services to protect life and property in locations outside of cities and towns. A board of three or five elected commissioners govern fire districts. The commissioner's compensation is limited to a maximum of \$104 per day and may not to exceed \$9,984 dollars per year, as adjusted for inflation every five years.

Volunteer Firefighters. The Fair Labor Standards Act does not regard individuals performing volunteer services for units of state and local governments as employees. The Federal Code of Regulations (CFR) defines a "volunteer" as an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation is considered to be a volunteer during such hours. The CFR recognizes that individuals may volunteer as firefighters or auxiliary police, or

volunteer to perform other tasks, while not being considered employees of a state or local government. These volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers.

Summary of Bill (First Substitute): The following classes of individuals are exempt from the definition of employment for the purposes of the PFML statutes:

- individuals when serving as a member of a statutory board, commission, council, committee, or other similar group classified as a class two, three, four, or five group;
- individuals when serving as an elected member, on one of the specified special purpose districts, who receive a per diem of \$250 per day, or less;
- individuals when serving as an appointed director, with a compensation limit of no more than \$1,000 per year, of an air pollution control authority; and
- volunteer firefighters compensated on per diem or nominal sum basis consistent with the definition of volunteer contained in the CFR.

Repeals the PFML waiver that exempts certain collective bargaining agreements from coverage until the agreement expires, is reopened, or is renegotiated.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute): Exempts additional classifications of individuals from the definition of employment for the purposes of the PFML statutes.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This fixes a loop hole in the PFML program that denies benefits to members of a collective bargaining unit until their contract expires or is renegotiated. Our contract does not expire until October, 2022. The Boeing company is using state law against its employees in contract negotiations and refuses to talk about any issues related to family or medical leave. Our supervisors qualify for these benefits, that are denied to the union employees. This benefit should be available to all employees. Fire commissioners and volunteer firefighters are exempted by this bill as the paperwork costs more than the amount of money deducted from their stipend. Fire commissioners would never use this benefit, as most have other fulltime jobs and just attend meetings at night. Regional fire authorities should be exempted too.

CON: We are supportive of the underlying law. We do not believe the program should exempt others from the law until the program has stabilized, as there have already been 16,000 applicants for benefits so far this month. The CBA language was drafted as a balance between the employers and worker provisions included in the program.

OTHER: We support the language concerning the exclusion of the commissioners, but are concerned with the language dealing with collective bargaining agreements. The bill was negotiated as a delicate balance and the CBA provisions were part of that balance. The CBA provisions apply to any business that had closed labor agreements.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Ryan Spiller, Washington Fire Commissioners; Jim Jesernig, Washington Grain Commission, Washington Potato and Onion Association; Dan Nowlin, Society of Professional Engineering Employees in Aerospace, IFPTE Local 2001; Justin Hoehn, Society of Professional Engineering Employees in Aerospace; Amy Freiburghaus, Society of Professional Engineering Employees in Aerospace, IFPTE 2001; Brandon Anderson, Society of Professional Engineering Employees in Aerospace; T.J. Nedrow, Washington State Fire Fighters' Association; Tim Boyd, Washington State Potato Commission.

CON: Julia Gorton, Washington Hospitality Association.

OTHER: Bob Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: No one.