

HOUSE BILL REPORT

HB 1241

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to the economic adjustment and assistance act.

Brief Description: Creating a process for business closures.

Sponsors: Representatives Jones, Heavey, King, Franklin, G. Cole, Romero, Brown, Veloria and Kessler.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 17, 1993, DP.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members:
Representatives Heavey, Chair; G. Cole, Vice Chair; Conway;
King; and Veloria.

Minority Report: Do not pass. Signed by 4 members:
Representatives Lisk, Ranking Minority Member; Chandler,
Assistant Ranking Minority Member; Horn; and Springer.

Staff: Chris Cordes (786-7117).

Background: Since 1989, federal law has required employers with 100 or more employees to give at least 60 days notice of an impending plant closure or mass layoff. According to data from the Employment Security Department, the federal law applies to approximately 2 percent of Washington businesses. These businesses employ about 40 percent of the state's workers.

Federal law also requires the notice to be given to the state dislocated worker unit, which is responsible for promoting the formation of labor-management committees. These committees are charged with developing strategies for assessing the employment and training needs of prospective dislocated workers.

Summary of Bill: State requirements for notice of plant closures and employees layoffs are established. The promotion of labor-management committees to assist

dislocated workers is recognized as the primary response to business closures and layoffs.

Covered employers

Business entities with 50 or more employees, excluding part-time employees, or with 50 or more employees who in the aggregate work at least 2,000 hours per week are required to give notice. This change in the coverage threshold would increase the number of covered employers to nearly 5 percent of the state's businesses and the number of covered employees to approximately 54 percent of the state's employees.

A business closure occurs if 25 or more employees have an employment loss during any 30-day period. There is an employee layoff if, during any 30-day period, an employment loss occurs for at least: (a) 33 percent of the employees and 25 employees, or (b) 500 employees.

Notice requirements

As required also by federal law, a covered employer must give at least 60 days notice of a business closure or employee layoff to the affected employees or employee representatives, to the state dislocated worker unit, and to local elected officials.

Exceptions to the notice requirements

The state exceptions to the notice requirements are similar to federal law. No notice is required if the closure or layoffs result from a natural disaster. The notice period may be reduced if: (a) the employer was actively seeking capital to enable the employer to avoid the shutdown and the employer believed in good faith that giving notice would preclude obtaining the capital, or (b) the closure or layoff is caused by business circumstances that a reasonable employer could not have foreseen based on information the employer knew or should have known on or after the date notice would have been required.

Responses to closures and layoffs

The primary mechanism of the state dislocated worker unit's response to closures and layoffs is promotion of labor-management committees. The unit is responsible for reporting to the Legislature on the number of notices received, the number of committees established, and the number of dislocated workers served. The unit must distribute closure notices within one week to the appropriate state agencies and the local reemployment

support center. The unit is to exchange information and coordinate programs with community-based organizations that assist dislocated workers.

On request, an affected employee or affected employee's representative is entitled to information from the employer about closures or layoffs ordered within 90 days of the affected employee's layoff. Local governments are also entitled to this information.

Remedies for violations of the notice requirements

If an employer orders a business closure or employee layoff in violation of the notice requirements, the employer is liable to the aggrieved employees for back pay for each day of violation. The number of days of liability is limited to a maximum of 60 days, but no more than one-half of the days the employee worked for the employer. The employer's liability to an employee may be reduced by the amount of wages paid for the period of the violation, or any voluntary payments made to the employee. The court may award costs and attorneys' fees to the prevailing party when suit is brought to enforce the notice requirements.

The employer is also subject to a \$500 civil penalty for violating the notice requirement with respect to the local government officials. The civil penalty does not apply if the employer pays the employees any amount for which the employer is liable.

If a collective bargaining agreement requires greater employee protection, then the collective bargaining agreement is not impaired by the bill's requirements.

Fiscal Note: Requested February 5, 1993.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: This bill requires the same notice that is required under the federal plant closure law, but it applies to employers with 50 or more employees, instead of 100 or more employees. Even with this change, 95 percent of employers are not covered. There are many examples of the importance of advance warning to encourage an orderly, constructive process during a very traumatic time for workers and the community. Giving notice promotes cooperative efforts between management and labor to reduce the hardship to all parties. If the transition to new jobs, retraining, or relocation is planned, the workers will not be forced to rely on government services to keep their

families together. In some cases, new employers can be found to save the workplace and the jobs.

Testimony Against: While the bill conforms substantially to the federal plant closure law, there are still some differences that cause compliance problems for employers. Losing a business is a very traumatic time for the employer as well as the worker. For a small employer, it can be very difficult to retain financing, customers, and the employees once notice has been given of a possible closure. The notice requirements are very complex, even for large employers. Most small employers do not have personnel staff to deal with these issues.

Witnesses: (Pro): Representative Evan Jones, prime sponsor; and Jeff Johnson, Washington State Labor Council.
(Con): Clif Finch, Association of Washington Business.