

# HOUSE BILL REPORT

## ESHB 2245

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### As Passed House:

March 11, 2009

**Title:** An act relating to clarifying public employees' benefits board eligibility.

**Brief Description:** Clarifying public employees' benefits board eligibility.

**Sponsors:** House Committee on Ways & Means (originally sponsored by Representative Cody; by request of Governor Gregoire).

### Brief History:

#### Committee Activity:

Ways & Means: 2/24/09, 3/2/09 [DPS].

#### Floor Activity

Passed House: 3/11/09, 97-0.

### Brief Summary of Engrossed Substitute Bill

- Authorizes the Public Employees Benefits Board (PEBB) to determine the criteria for eligibility for benefits.
- Establishes an 80-hour rule for half-time employee eligibility, and establishes a half-time rule for community and technical college faculty equivalent to the definition of part-time academic workload.
- Makes eligibility determinations subject to periodic review, and provides that the Health Care Authority may use different eligibility criteria when contracting to provide coverage for a school district, local government, or tribal government.
- Allows school districts and educational service districts that purchase employee benefits through the PEBB program to be charged on a school-year basis rather than a fiscal-year basis.

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### HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Linville, Chair; Ericks, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier,

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Assistant Ranking Minority Member; Chandler, Cody, Conway, Darneille, Haigh, Hinkle, Hunt, Hunter, Kenney, Pettigrew, Priest, Ross, Schmick and Sullivan.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Kagi, Kessler and Seaquist.

**Staff:** David Pringle (786-7310)

**Background:**

The Public Employees Benefits Board (PEBB or Board) is an organization within the Health Care Authority (HCA) charged with developing benefits plans, forming benefits contracts, developing participation rules, and approving schedules of rates and premiums for active employee and retired participants. The members of the PEBB vote to approve contracts and benefits for the PEBB program. There are nine members of the PEBB, seven of whom are voting members. All of the PEBB members are appointed by the Governor. Among the types of benefit plans provided to employees and retirees through the PEBB program are health, dental, life, long-term disability, and long-term care insurance.

Most of the criteria for benefits eligibility are laid out in administrative rules rather than in statute. The PEBB may not adopt eligibility criteria that are substantially different from those that were in place as of January 1, 1993. State agencies are required to fully cooperate with the HCA to allow the employee benefits offered by the PEBB to be administered effectively, and are required to report all data relating to employee eligibility to participate in a form determined by the HCA.

**Summary of Engrossed Substitute Bill:**

The PEBB is authorized to design benefits and to determine the criteria for eligibility for those benefits, unless those terms are specified in a collective bargaining agreement negotiated under the terms of the Personnel System Reform Act of 2002 (41.80 RCW). The prohibition on the adoption by the PEBB of eligibility standards substantially different from those effective as of January 1, 1993, is removed. Alternative restrictions are placed on the eligibility standards that the PEBB may adopt for various types of employees. While detailed requirements vary depending on circumstances of employment, employee eligibility standards may be generalized as follows:

- Faculty members at institutions of higher education who are expected to work half-time over a period of at least nine months are eligible for benefits for the entire instructional year.
- Seasonal employees who are expected to work half-time or more, as defined by the Board, in each month of the applicable work season are eligible for the benefits for the season of employment.
- An elected or appointed official of the executive, legislative, or judicial branch of state government is eligible for benefits as of the beginning of his or her term of office or the date that he or she takes the oath of office.

Most other employees are eligible for benefits if it is anticipated that they will work 80 hours or more, for more than six consecutive months. If an employee does not work half-time or more in each of six consecutive months, but averages 80 hours or more hours per month over the six-month period and works at least eight hours in each month, then he or she becomes eligible for benefits at the end of the six-month period. Half-time for community and technical college faculty is equivalent to the "part-time academic workload" definition in existing statute.

The HCA may delegate to employing agencies the task of determining individual employees' eligibility for benefits. Any determination as to whether or not an employee is eligible for benefits is subject to periodic review. Provisions are established for revising the eligibility for benefits of employees whose actual hours of employment differ from expected levels.

The HCA may use eligibility criteria other than those adopted by the PEBB when contracting to provide benefits for employees of a local government entity, school district, educational service district, or tribal government. In addition, the HCA may charge school districts and educational service districts that purchase employee benefits through the PEBB program on a school-year basis rather than a fiscal-year basis.

An employee determined to be eligible for benefits prior to January 1, 2010, will not have his or her eligibility terminated due to the new criteria established by the bill.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect on January 1, 2010.

**Staff Summary of Public Testimony:**

(In support) For too long these statutes have been vague and inconsistently applied. We appreciate the HCA's work to create a clear, fair, and enforceable set of rules. We would support several minor amendments to this bill. The wisdom behind this bill is that there are inconsistent and independent decision-making processes. The bill will as much as possible reflect the standards that HCA believes exist now. The potential fiscal impact is unintended – the bill is attempting to codify current rules. This is an important bill for HCA. Eligibility is poorly defined in law; the PEBB is required to reference a poorly defined 1993 statute. The Moore case is revealing that these rules are administered in a wide variety of ways, creating potential liability. We want to avoid another class action lawsuit. We have worked with a broad group of stakeholders on this. Many of the costs in the fiscal note are not related to the bill, but the costs of the Moore lawsuit that was ruled on during March in Superior Court.

(With concerns) We see this as a work in progress, but have concerns that some of the most vulnerable and poorly treated employees of the state – part-time faculty – are not treated well under the bill. Why should the part-timers wait two years for eligibility rather than one? We would like to remove the requirement that employees notify employers of their potential eligibility for benefits. In several sections of the bill, eligibility is less consistent than current

practice, not more. Employees working the same number of hours should have the same benefits. We see some take-aways here for some seasonal employees and part-time faculty.

(Opposed) None.

**Persons Testifying:** (In support) Jonathan Seib, Office of the Governor; Alia Griffing, Washington Federation of State Employees; and Steve Hill, Washington State Health Care Authority.

(With concerns) John Boesenberg, State Board for Community and Technical Colleges; Larry Ganders, Washington State University; Wendy Rader-Konafalski, Washington Education Association; and David West, Center For A Changing Work Force.

**Persons Signed In To Testify But Not Testifying:** None.