

SENATE BILL REPORT

ESSB 5193

As Amended by House, April 5, 2021

Title: An act relating to unemployment insurance systems enhancements, including creating a reserve force of unemployment claim adjudicators, effective and equitable claims processing, and transparent performance metrics.

Brief Description: Concerning unemployment insurance systems enhancements, including creating a reserve force of unemployment claim adjudicators, effective and equitable claims processing, and transparent performance metrics.

Sponsors: Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators Conway, Keiser, Hasegawa and Wilson, C.).

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/20/21, 2/10/21 [DPS, DNP, w/oRec].

Floor Activity: Passed Senate: 2/25/21, 48-0.

Passed House: 4/5/21, 97-0.

Brief Summary of Engrossed First Substitute Bill

- Requires the Employment Security Department (ESD) to create a training program to train qualified persons to perform as unemployment insurance claim adjudicators.
- Mandates the Office of Financial Management assist ESD in identifying agencies with state employees who meet minimum qualifications to be adjudicator.
- Requires ESD to assure written communications are tested and in plainly understood language; convey statutes and explanations in determinations; work with an advisory committee on certain issues; provide a toll-free number; maintain an online dashboard and provide quarterly performance metrics reports during times of high

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unemployment; and provide an annual report to the Legislature regarding adjudicator certifications.

- Establishes an unemployment insurance legislative work group for ESD to inform of the progress the act's implementation; report on any new federal programs or funds received and the use of such funds; provide information and research; and for the work group to review and consider certain issues.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Majority Report: That Substitute Senate Bill No. 5193 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair, Labor; Stanford, Vice Chair, Commerce & Tribal Affairs; Robinson and Saldaña.

Minority Report: Do not pass.

Signed by Senators Honeyford and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators King, Ranking Member; Braun.

Staff: Susan Jones (786-7404)

Background: An unemployed individual (claimant) is eligible to receive unemployment insurance benefits (UI benefits) if the individual: (1) worked at least 680 hours in the base year; (2) was separated from employment through no fault of the claimant's or quit work for good cause; and (3) is able to work, available to work, and is actively searching for suitable work. The Employment Security Department (ESD) administers Washington State's unemployment insurance program.

The federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020. The CARES Act provided many new and extended UI benefit programs, which ESD administers. One program was the Pandemic Unemployment Assistance Program, providing UI benefits to self-employed individuals, workers with insufficient work history, and others who are not eligible for regular state UI benefits. Another program was the Federal Pandemic Unemployment Compensation (FPUC) program, which provided an additional \$600 per week of benefits. The FPUC expired at the end of July 2020. The Lost Wages Assistance (LWA) program was authorized through a presidential memorandum signed on August 8, 2020. The LWA program provided an additional \$300 per week of benefits for the weeks ending August 1st through 29th and September 5th. Many of the federal CARES Act programs continue through the Continued Assistance for Unemployed Workers Act, which was signed into law on December 27,

2020, for weeks of unemployment after 2020 through March 14, 2021.

During the COVID pandemic, UI claims, including claims under the new federal programs, increased substantially. ESD hired and trained new staff to process claims, including members of the national guard.

Summary of Engrossed First Substitute Bill: ESD must create a training program to prepare a reserve force of skilled unemployment insurance claim adjudicators. The program must:

- be open to both state and other public employees and private citizens;
- be of sufficient quality that persons completing the training and any required continuing education would be ready to work as a UI claim adjudicator within one week of commencing employment with ESD; and
- provide a certification of completion to participants who complete the program.

The Office of Financial Management must collaborate with ESD to assist ESD in identifying agencies with state employees, who meet the minimum qualifications to work as unemployment insurance claim adjudicators. With agency approval, employees may attend the trainings.

ESD must:

- designate employees to assure written communications are tested and in plainly understood language. Criteria for approval must include comprehensibility, clarity, and readability. If the messaging of any letter, alert, or notice falls short of those criteria, manual methods of producing a comprehensible version shall be considered while ESD waits for their unemployment insurance technology system to incorporate required modifications;
- convey statutes and explanations in determinations;
- work with an advisory committee to explore establishing threshold to adjust staffing issues and a pilot program for unemployment to reemployment; increasing language access; and frequency of trainings;
- provide a toll-free number for claimants lacking computers or computer skill or with disabilities or limited English proficiency;
- maintain an online dashboard and provide quarterly performance metrics reports when statewide unemployment equals or exceeds 5 percent; and
- must conduct regular drills to practice their response to emergency economic conditions.

The metrics report must include: updates of unemployment rates; total numbers of claims paid, amount compensated, claims denied, claims pending in adjudication, claims on which payment has been halted for review, pending appeals, appeals redetermined by ESD, and appeals sent to the office of administrative hearings; claims center phone statistics including call volume, hold times, abandoned calls, repeat calls, and all-circuits-busy messages for both claimants and employers; ratio of staff phone agents to employers and

ratio of staff phone agents to claimants; number and dollar total of overpayments imposed and overpayment waiver approval rate; and the percentage of unemployed persons receiving benefits.

By October 1, 2021, and each year thereafter, ESD must provide a report to the Legislature on the number of persons with current adjudicator certifications, the number of persons employed by the ESD and over what period of time, and the adjudicator training and hiring costs.

The unemployment insurance legislative work group is established. The work group consists two members from each of the two largest caucuses of the Senate and the House of Representatives. ESD must:

- meet with the unemployment insurance legislative work group at least quarterly to inform the members of the progress in implementing this act; and report on any new federal programs or funds received by ESD for unemployment compensation and administration and the use of such funds; and
- provide information and research unemployment issues as requested by members of the work group.

The work group must review ESD's software and technology issues and protocols and process for protecting sensitive data; and consider ways to support the advisory committee and to assist claimants and businesses during times when additional adjudicators are needed or times of high unemployment.

Legislative findings are made.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

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

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: This bill would increase the number of adjudicators and expedite claim resolution. No one anticipated the unprecedented surge of volume of the UI claims. There was a lot of unfair criticism of ESD for a situation that no one could have anticipated. The thousands of claims overwhelmed ESD. This was compounded by the international fraud. This further delayed the claims process.

ESD hired hundreds of people. These are skilled positions. Adjudicators resolve disputes. You cannot just walk in off the street and do the work. It took a long time to build up

capacity to meet the demand.

Having a trained, skilled work force ready seems logical. The trained staff could pivot their work to adjudicating UI claims and help with backlogs. This bill is a first step in improving the UI process.

OTHER: ESD had an economic cycle plan based on the Great Recession to prepare for the next downturn. They anticipated doubling the claims adjudicators. This was larger in scale than anticipated. The claim resolution requires trained adjudicators. More highly trained staff are needed to handle complex issues that newly trained staff do not have the skill set to manage. This would create a pool of certified trained people.

Persons Testifying: PRO: Senator Steve Conway, Prime Sponsor; Dennis Eagle, Washington Federation of State Employees; Sybill Hyppolite, Washington State Labor Council, AFL-CIO.

OTHER: Dan Zeitlin, Washington ESD.

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

EFFECT OF HOUSE AMENDMENT(S):

- Removes the condition that the ESD only provide certain data when the unemployment rate equals or exceeds 5 percent.
- Removes the legislative work group.
- Requires ESD to report to the Legislature at least quarterly through September 1, 2022, on the implementation of the bill, update on federal programs and receipt of funds, and other information and issues related to claims processing, administration, and data.