

# HOUSE BILL REPORT

## HB 2251

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### As Reported By House Committee On:

Commerce & Labor  
Appropriations

**Title:** An act relating to unemployment compensation eligibility for educational employees.

**Brief Description:** Determining compensation eligibility for educational employees.

**Sponsors:** Representatives Huff, Clements and Carlson.

### Brief History:

#### Committee Activity:

Commerce & Labor: 3/24/97, 3/31/97 [DP];  
Appropriations: 4/5/97 [DP].

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass. Signed by 5 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements and Lisk.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Cole and Hatfield.

**Staff:** Chris Cordes (786-7103).

**Background:** Under the Federal Unemployment Tax Act (FUTA), if a state maintains an unemployment insurance system in conformity with federal law, that state's employers receive a tax credit against their federal unemployment tax of 90 percent of the federal tax. In addition, the conforming state receives a share of the FUTA revenues for administration of its unemployment insurance system.

One of the requirements of federal law addresses unemployment benefits for certain public and nonprofit educational institutions' employees. Unemployment compensation may not be paid to these employees for unemployment that occurs between two successive academic years or terms if the employee has reasonable assurance that he or she will be reemployed for the same services in the next academic year or term. "Reasonable assurance" is defined as a written, verbal, or

implied agreement that the employee will be reemployed in the same capacity. Until 1995, Washington's unemployment insurance statutes included language that was the same as federal law.

In 1994, the Washington Court of Appeals held that, in view of the state's failure to show that summer quarter was qualitatively different from other academic terms and with no indication that the Legislature intended summer quarters to be "off" quarters, unemployment benefits could not be denied during the summer for a part-time community college faculty member who was not offered a position during the summer quarter. Following that decision, the U.S. Department of Labor (USDOL) advised the Employment Security Department that the court's opinion raised a federal conformity issue.

The following year, legislation was enacted that amended the requirements for unemployment insurance determinations involving part-time faculty at community colleges and technical colleges. For these faculty, the definition of "academic year" means fall, winter, spring, and summer quarters or comparable semesters, unless objective criteria, including enrollment and staffing, show that the term is not in fact part of the educational institution's academic year.

For determining eligibility for benefits between successive academic years or terms for these part-time faculty, the 1995 law provides that "reasonable assurance" does not include an agreement to provide services when the agreement is contingent on enrollment, funding, or program changes.

The USDOL has again advised the Employment Security Department that this legislation raises a federal conformity issue because the law does not apply the same provisions to all educational employees.

**Summary of Bill:** The provisions used for determining unemployment benefits for part-time faculty at community and technical colleges are amended. First, the definition of "academic year" that includes summer quarter or semester as part of the academic year is repealed, unless objective criteria show otherwise. Second, the provision is repealed that excludes agreements contingent on enrollment, funding, or program changes from those agreements that constitute "reasonable assurance."

A new definition is added that applies to all public and nonprofit educational institution employees and provides that "academic year" does not include the summer quarter or semester unless, based on objective criteria, the summer quarter or semester is in fact a part of the academic year for the particular institution.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** (Provided as information only) The bill takes one possible approach to address the conformity issue raised by the U.S. Department of Labor.

**Testimony Against:** The approach taken by this bill is not necessary to bring the state into conformity with federal law. The federal issue could be addressed by applying the 1995 changes to all educational employees. The bill hurts the part-time faculty who are usually quarter-to-quarter hires who have little guarantee of continued work. The changes made in 1995 have encouraged the schools to treat these faculty members better. Going back to the "old" law will allow the community colleges to continue paying these employees poverty level wages but eliminate unemployment compensation when the employees are not hired during summer quarter. Many of these faculty members have no choice about being part-time. They would be working full-time, and during the summer quarter, if offered employment. Those faculty members who do not want to work during the summer would not be eligible for unemployment compensation. The provision dealing with "contingent" contracts should be retained.

**Testified:** (Opposed) Wendy Rader-Konofalski, Washington Federation of Teachers; Diane Evans; Keith Hoeller; Jeff Johnson, Washington State Labor Council. (Information only) Graeme Sackrison, Employment Security Department.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass. Signed by 17 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; Benson; Cooke; Crouse; Dyer; Lambert; Lisk; Mastin; McMorris; Parlette; D. Schmidt; Sehlin; Sheahan and Talcott.

**Minority Report:** Do not pass. Signed by 14 members: Representatives H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Carlson; Chopp; Cody; Grant; Keiser; Kenney; Kessler; Linville; Poulsen; Regala and Tokuda.

**Staff:** Jim Lux (786-7152).

**Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Commerce & Labor:** No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** None.

**Testimony Against:** This bill does not reflect the language that the federal Department of Labor requires. Nonconformance with federal requirements is not a reason for taking unemployment benefits away. This bill hurts part-time faculty and will not stop these faculty members from claiming benefits. What will happen is another lawsuit, and there will be increased costs to adjudicate unemployment compensation claims. The state will have to pay attorneys' fees when it loses in court. Colleges have been encouraged to bargain nine-month contracts without success in order to eliminate this problem. If there was a clear definition of reasonable assurance of employment for the next quarter or semester, this problem could be resolved. Another option would be to fund unemployment benefits for all part-time teachers in higher education and the common school system.

**Testified:** Wendy Rader-Konofalski, Washington Federation of Teachers; and Diane Evans, Washington Association of Part-Time Faculty.