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**State Government & Tribal Relations  
Committee**

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**ESB 5294**

**Brief Description:** Creating leave provisions for legislative service.

**Sponsors:** Senators Hunt, Hasegawa, Pedersen, Kuderer, Zeiger, Takko, Keiser and Saldaña.

**Brief Summary of Engrossed Bill**

- Requires private employers with 10 or more employees or governmental employers to, upon proper notice, grant a temporary leave of absence to allow an employee who is a member of the Legislature to perform official duties during regular and special legislative sessions.
- Creates a civil cause of action to enforce this requirement through a superior court order requiring reinstatement.

**Hearing Date:** 2/21/20

**Staff:** Jason Zolle (786-7124).

**Background:**

*Washington's Legislature.* The state legislature in Washington is a citizen legislature comprised of people who often have other sources of employment outside of (or sometimes even during) legislative session. The Legislature is in regular session from the second Monday in January until mid-late April during odd-numbered years, and the second Monday in January until early-mid March during even-numbered years.

*Protected Employment.* Washington grants employment protection to elected officials who are also civil service employees of the state or local governments. While on leave, those officials retain civil service status—including seniority, rank, and retirement status—so long as they continue to make the usual contribution incident to such benefits. Also, members in the Washington State Patrol retirement system who take a leave of absence to serve as a legislator

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may continue to receive service credit, so long as they pay employee contributions and the Legislature pays employer contributions.

Washington also grants employment protection to a few classes of employees to perform outside employment or service, although details differ. For instance:

- State or local government employees who are members of the Washington National Guard or United States military are entitled to 21 days of paid leave.
- State or local government civil service employees are entitled to maintain their seniority and retirement rights while taking a leave of absence to serve for an emergency management agency.
- State agency employees who receive temporary appointments with federal agencies are entitled to retain their state employment in a leave-of-absence status.
- Employers with over 20 employees may not discharge or discipline volunteer firefighters or civil air patrol members who take leave related to emergencies.

*Retroactive Legislation.* Although the text of the Ex Post Facto Clauses of the United States and Washington Constitutions generally prohibits retroactive legislation, the Supreme Courts of both the United States and Washington have interpreted their Constitutions to prohibit only retroactive legislation that imposes criminal (or similarly punitive) liability.

#### **Summary of Bill:**

A private employer with 10 or more employees or a governmental employer must grant a temporary leave of absence, without loss of job status or seniority, to allow an employee who is a member of the Legislature to perform official duties as a legislator during regular and special legislative sessions. The leave of absence may be unpaid, although an employer must allow a legislator-employee to use any accrued paid leave to which the legislator-employee is entitled. An employer may not discharge or threaten to discharge an employee for taking a leave of absence.

A legislator-employee seeking a temporary leave of absence must provide notice to an employer at least 30 days before a regular session and as soon as the Governor or Legislature calls a special session.

This act may be enforced through a civil action in superior court seeking an order requiring reinstatement of the legislator-employee. The legislator-employee may not use public resources, directly or indirectly, to bring or maintain the civil action. The requirements in this bill apply retroactively to January 1, 2019.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.