

HOUSE BILL REPORT

HB 2441

*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.

Sponsor(s): Representatives Jones, Heavey, Franklin, Prentice, G. Cole and R. King.

Brief History:

Reported by House Committee on:
Commerce & Labor, January 30, 1992, DPS.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 7 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Franklin; Jones; R. King; O'Brien; and Prentice.

Minority Report: *Do not pass.* Signed by 4 members: Representatives Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Vance; and Wilson.

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. Data from 1990 compiled by the Employment Security Department indicate that the federal law applies to just under 2 percent of Washington businesses. These businesses employ about 40 percent of the state's workers.

Federal law 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 Substitute 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 at least 60 days notice of a business closure or employee layoff. 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 provide the notice to affected employees or employee representatives, to the state dislocated worker unit, and to local elected officials.

If a collective bargaining agreement requires greater employee protection, then the collective bargaining agreement is not impaired by the act.

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.

Substitute Bill Compared to Original Bill: The substitute bill: (1) limits an employer's liability for violating the notice requirements by allowing suit to be brought only by employees who are aggrieved by the violation and who suffer an employment loss as a result of the closure or layoff. 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; (2) authorizes the court to award costs and attorneys' fees to the prevailing party when suit is brought to enforce the notice requirements; (3) makes the employer subject to a 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; (4)

entitles a unit of local government to information about closures or layoffs occurring within 90 days of a layoff ordered by the employer; and (5) requires the dislocated worker unit to 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.

Fiscal Note: Requested January 20, 1992.

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

Testimony For: Requiring notice of plant closure and employee layoffs is not "anti-employer." Several recent plant closure situations have shown that cooperation between employers, employees, and government agencies is the best way to assist the workers and the community to transition to the new economic circumstances resulting from the closure. In some cases, early warning has enabled the plant to stay in business. Smaller employers, not now covered by the federal law, could also benefit from the assistance provided by a labor-management committee before and during a closure.

Testimony Against: Government regulation is having a huge impact on the ability to run a small business. Any new liability imposed on small employers will discourage business development. Small employers and their employees could be given assistance without threatening the employer with penalties. It is especially difficult for employers when the state law and federal law have differing provisions.

Witnesses: (In favor): Jim Tussler, Washington State Labor Council; Rich Feldman, Seattle Worker Center; and Charlie Best, King County Reemployment Center. (Opposed): Gary Smith, Independent Business Association; and Clif Finch Association of Washington Business.