

HOUSE BILL REPORT

ESB 5294

As of Second Reading

Title: An act relating to encouraging citizens to serve in the legislature by creating leave provisions for legislative service.

Brief Description: Creating leave provisions for legislative service.

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

Brief History:

Committee Activity:

State Government & Tribal Relations: 3/19/19, 4/3/19 [DPA], 2/21/20.

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.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass as amended. Signed by 5 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Appleton, Dolan and Hudgins.

Minority Report: Do not pass. Signed by 4 members: Representatives Walsh, Ranking Minority Member; Goehner, Assistant Ranking Minority Member; Mosbrucker and Smith.

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

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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

Staff Summary of Public Testimony:

Hearing Date March 19, 2019

(In support) Washington has a citizen legislature and it is important to maintain that. Virtually all employers permit legislators to maintain their outside jobs with various degrees of agreement. This bill is intended to protect the citizen legislature. Being elected as a legislator should not be cause for termination.

(Opposed) None.

Hearing Date February 21, 2020

(In support) This bill is not about a hypothetical situation. There have been two legislators who have been fired, and a third whose job is being threatened, just because they serve in the Legislature. If the state is going to maintain the citizen-legislature it has and get quality people to serve, there must be job protection. This bill will help increase socioeconomic and professional diversity in the Legislature by giving others the option to consider serving. Certain people are already functionally protected because they have high-level executive positions or own their own businesses, but the average working class person with a minimum wage job does not currently have the option to return to a job after serving in the legislator. The legislator salary is not enough for most people who are supporting a family, and other income is appropriate. This bill passed committee last year but the House ran out of time, and hopefully they won't run out of time this year.

(Opposed) None.

Persons Testifying:

Hearing Date March 19, 2019

Senator Hunt, prime sponsor.

Hearing Date February 21, 2020

Senator Hunt, prime sponsor; and Kathy Sakahara, The League of Women Voters of Washington.

Persons Signed In To Testify But Not Testifying: None.