

HOUSE BILL REPORT

ESB 5294

As Reported by House Committee On: State Government & Tribal Relations

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].

Brief Summary of Engrossed Bill (As Amended by Committee)

- 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 serve during regular and special legislative sessions.
- Creates a civil cause of action to enforce this requirement through damages and 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:

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.

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 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.

Summary of Amended 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 serve as a legislator during regular and special legislative sessions. The leave of absence may be unpaid, although an employer may 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, intimidate, or coerce an employee for taking a leave of absence. At the end of the leave of absence, the legislator-employee must be restored to the same position, so long as the position still exists, unless the employee does not return to work in a specified time or the employer's circumstances have changed to make employment impossible or unreasonable. If the position does not still exist, the employee must be given as similar a position as possible, without loss of seniority and any employment benefits.

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 it is reasonably apparent that a special session will be called. A leave of absence need not be granted if the legislator-employee does not provide proper notice, or if the legislator was employed on a temporary basis or for less than 90 days before the legislative session.

This act may be enforced through a civil action in superior court seeking damages or 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. A prevailing legislator-employee is entitled to costs and reasonable attorneys' fees.

Amended Bill Compared to Engrossed Bill:

The amended bill prohibits an employer from intimidating or coercing an employee because the employee seeks a leave of absence to serve as a legislator. It removes provisions allowing the act to be enforced retroactively. It specifies that an employer may, rather than must, allow an employee to use accrued paid leave for any part of the leave of absence. It provides specific exceptions to the general rule that an employee must be allowed to take a leave of absence or is entitled to restoration of employment following a leave of absence. It allows an aggrieved employee to sue an employer that violates the act for damages and to seek any other remedy that may be available, and it provides for costs and reasonable attorneys' fees to be awarded to a prevailing employee.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(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.

Persons Testifying: Senator Hunt, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.