

- SUBJECT:** Revising standards of eligibility for unemployment compensation
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 6 ayes — Deshotel, Elkins, England, Giddings, Quintanilla, S. Turner
2 nays — Christian, Orr
3 absent — Gattis, Keffer, S. Miller
- SENATE VOTE:** On final passage, April 20 — 19–11 (Estes, Fraser, Hegar, Huffman, Jackson, Nelson, Nichols, Patrick, Seliger, Shapiro, Williams)
- WITNESSES:** No public hearing.
- BACKGROUND:** The federal American Recovery and Reinvestment Act appropriates an estimated \$555 million to Texas for unemployment insurance (UI) assistance, provided the state makes legislative revisions to its unemployment compensation eligibility criteria. To receive the first one-third of available funding, the state would have to adopt an “alternate base period” when determining eligibility for potential UI recipients. This change in effect would allow the most recent quarter of employment to be considered in benefit assessments, in contrast to current law, which recognizes employment history one full quarter before the date of application. In addition, the state would have to make two of four additional changes, which involve eligibility for part-time workers, compelling family reasons for relocation, benefits for individuals enrolled in training programs, and additional allowances for dependent children.
- Federal unemployment insurance funds would be allocated directly to the Unemployment Compensation Trust Fund upon confirmation from the U.S. Department of Labor that the state made the necessary conforming changes to qualify under federal guidelines.
- Labor Code, Title 4, subtitle A establishes the Texas Unemployment Compensation Act, which contains standards for determining eligibility for unemployment insurance and other aspects of unemployment compensation in the state. The code provides that an individual is

disqualified for unemployment benefits if the individual leaves work voluntarily without good cause. For matters of determining benefits and eligibility, the code defines “base period” as the four consecutive completed calendar quarters in the five consecutive completed calendar quarters preceding the first day of an individual’s benefit year. To be eligible for unemployment benefits, an individual must have received compensation in two of the four quarters in the base period.

An individual who leaves work to relocate with a spouse and files a valid claim is ineligible for benefits for at least six and no more than 25 weeks, based on the circumstances of the case. An individual cannot be disqualified for a move made with a spouse who is a member of the armed forces and that resulted from the spouse’s permanent change of station longer than 120 days or a tour of duty longer than a year.

An individual is not disqualified for unemployment benefits if the individual left the workplace for protection from family violence or to care for a terminally ill spouse or the illness of a minor child. The exception provided for family violence has to be evidenced by a recently issued protective order or a police record documenting the family violence, or a physician’s statement or other medical documentation that identifies and describes the violence against the employee. An exception for a terminally ill spouse has to be supported by a physician’s statement or other medical documentation.

DIGEST:

CSSB 1569 would make changes to the Texas Unemployment Compensation Act in determining eligibility for benefits and would establish a task force on unemployment compensation reform.

Recovery Act modifications. CSSB 1569 would amend the Texas Unemployment Compensation Act, making the state eligible to receive federal funds appropriated in the Recovery Act. The bill would create an “alternate base period” for the purpose of determining benefit eligibility. An alternate base period would be defined as the four most recently completed calendar quarters before an individual applied for benefits. It would apply to those claimants who otherwise would not qualify under the standard base period.

The bill would delete provisions in current law requiring a lag in benefits of between six and 25 weeks for a person who lost a job due to a relocation of the person’s spouse. A spouse could not be disqualified from

receiving benefits if a move made it impractical for the spouse to commute.

Under the bill, an individual would qualify for benefits even if the individual was seeking and available only for part-time work, defined as employment of at least 20 hours per week.

The bill would revise language establishing eligibility for a person who left work due to the illness of a child or a terminally ill spouse or for reasons of family violence. Existing documentary requirements establishing a person's eligibility for reasons of family violence would be replaced by "reasonable documentation," which could include a statement from a qualified professional. Exceptions for illness of a child or a terminally ill spouse would be extended to an illness of an immediate family member.

Redefining "last work." In addition to making changes for eligibility for federal funds, CSSB 1393 would revise the definition of "last work" used to determine the eligibility of an initial claim. Under the bill, the "last work" of a person applying for benefits would be the last person for whom the claimant worked at least 30 hours a week or the last person the claimant worked for who met the definition of an employer in the Texas Unemployment Compensation Act.

Task Force on Unemployment Compensation Reform. On January 1, 2010, or later, the governor would have to appoint a task force to study the administration, financing, and benefit eligibility of unemployment compensation in the state. The task force would be composed of nine members, including:

- a person representing large businesses or chambers of commerce;
- a person representing small businesses in this state;
- a person representing organized labor;
- a recognized state or national expert on unemployment insurance financing and eligibility;
- a person representing low-wage or unemployed workers in this state;
- a recognized expert from the field of economics and labor market analysis;
- a person with experience in workforce development and training programs;

- a person appointed by the lieutenant governor; and
- a person appointed by the speaker of the House of Representatives.

The members of the task force would be advised by employees of certain agencies and chambers. The task force would be charged with specific duties relating to unemployment compensation and would make recommendations to the Texas Workforce Commission (TWC) by January 1, 2012. At that time, the TWC would determine whether any of the unemployment compensation reforms required under the Recovery Act warranted continuation.

The bill would apply to unemployment compensation claims filed on or after its effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSSB 1569 would accomplish the dual goals of securing eligibility for the state of \$555 million in federal funds for unemployment compensation and providing necessary modifications to the state's outdated unemployment compensation system. The state's current unemployment insurance (UI) system is in distinct need of additional funding and reform. Texas ranks at the bottom nationally in the percentage of unemployed workers receiving jobless benefits. According to TWC, state unemployment insurance claims have grown about 140 percent over the past year, and initial claims are up more than 100 percent during this time. A recent TWC estimate projected the unemployment compensation fund balance to fall to \$18.8 million by October 1, 2009, which would be \$839 million below the statutory floor of 1 percent of all taxable wages. When the amount of money in the fund falls below the floor, a "deficit tax" is imposed on businesses that pay unemployment taxes to bring the fund balance above the statutory floor.

Making the changes required to be eligible for federal stimulus funds could forestall some of the inevitable business tax increases triggered by the fund's diminished balance. Making changes now could reduce employer deficit taxes by as much as 70 percent in the short term. CSSB 1569 is necessary to establish eligibility and also would offset costs for borrowing funds to resolve imminent deficits. The additional revenue made available through the fund would be sufficient to cover any additional costs for expanded eligibility in the short term. The Legislative

Budget Board (LBB) has estimated that costs associated with the unemployment modernization could total about \$369 million over the course of five years, well below the funds that would be made available through the Recovery Act. Further, every \$1 of the federal UI money accepted for the additional benefits could generate \$2.15 of economic activity, stimulating the state's economy during a deepening statewide and national recession.

The bill would save an estimated additional \$82.6 million for the unemployment insurance trust fund by ending a deceptive practice some claimants use to avoid disqualification under existing state laws. Under current law, an employee who is fired can maintain eligibility by assuming an informal, temporary job for a short time and then applying for benefits upon the natural termination of that employment. SB 1569 would add a provision defining "last work" as employment in excess of 30 hours per week or through an employer that is part of the unemployment insurance system in the state. This measure would effectively end this deceptive practice by removing this eligibility loophole.

A recent policy statement from the U.S. Department of Labor indicated that states would have the option of subsequently repealing legislation enacted to establish eligibility for the UI funds under the Recovery Act. The state could accept the funds now, when they are needed to address economic woes, while reserving the right to minimize its long-term obligations. The task force established in the bill would provide a great opportunity to study the changes made after the funds have been fully received and distributed. After reviewing the findings, the TWC could determine if the provisions should be retained or rolled back.

**OPPONENTS
SAY:**

CSSB 1569 would constitute an unfunded federal mandate by requiring a permanent increase in state costs in exchange for temporary federal assistance. Current estimates about the probable cost of accepting the funds, about \$369 million over the next five years, are misleading. Such projections assume that the state's economy would not be affected by accepting the Recovery Act funds. In fact, accepting the Recovery Act funds is likely to result in a negative impact on the state's economy that would increase the burden on unemployment compensation resources, cancelling any positive five-year gain to the trust fund. The costs of accepting unemployment compensation funds would amount to a long-term drain on the private sector that could reduce growth in real net business output and ultimately result in significant job losses in the state.

Expanding the eligibility for unemployment insurance would force businesses to pay higher taxes into the unemployment trust fund. This would amount to a tax increase on businesses, with negative long-term implications for those businesses and the state economy. Texas thus far has fared better than many states in the recession, largely due to regulatory and tax and spending policies that are favorable to a healthy business climate. Increasing taxes on businesses could erode the state's reputation as an attractive place to establish and conduct business and actually could cause a loss of business— some of which may leave and some that may be repelled from the state due to the added tax burden.

While the state theoretically could repeal the expanded eligibility requirements in the future, there is no guarantee this would happen. The unemployment compensation task force established in the bill would have no authority to make any official changes in the expanded eligibility provisions and therefore would have little added value other than as an interim committee assigned to study the topic. In addition, the findings of the task force would come too late. The state is in a serious recession and can scarcely afford to threaten private businesses at this volatile time. The task force findings, which would be reported to the TWC as late as 2012, would be primarily an afterthought.

There are much more productive solutions to address funding shortfalls in the unemployment insurance trust fund. One way to increase the amount of money available in the trust fund would be to be more vigilant about fraud and overpayments. A federal Department of Labor study from 2000 found that 13.8 percent of Texas unemployment trust fund payouts came from fraud and overpayments. The state should pursue policies to reduce these illegitimate payments from the trust fund before it considers measures that could result in additional obligations on employers.

NOTES:

The Legislative Budget Board estimates that the bill would have no impact on general revenue, but would have a probable cost to federal funding for the Texas Workforce Commission of \$2.3 million in fiscal 2010-11 for full-time employees necessary to administer the bill's provisions. The fiscal note estimates that the bill could have five-year costs of:

- \$207.2 million for implementing an alternate base period;
- \$137.4 million for expanded eligibility to those seeking part-time employment; and

- \$24.7 million for expanding eligibility to those with compelling family reasons for losing employment.

The fiscal note estimates that the state would be eligible to receive \$185 million for adopting changes in the alternate base period and \$371 million for other required changes. In addition, the fiscal note estimates a savings to the unemployment trust fund of \$82.6 million for revisions to qualifications associated with “last work.”

The committee substitute deleted a provision in the Senate-passed version stating that the bill would take effect only if federal funds were provided to the state under the Recovery Act in an amount not less than \$555 million for unemployment insurance modernization.