



**Public Hearing Written Testimony of  
Dennis C. Murphy, Acting Commissioner**

**Labor and Public Employees Committee  
February 15, 2011**

Good Afternoon Senator Prague, Representative Zalaski and members of the Labor and Public Employees Committee. Thank you for the opportunity to provide you with written testimony regarding **H.B. 934 AAC the Reasonable Assurance Doctrine under the Unemployment Compensation Act**. My name is Dennis C. Murphy and I am the Acting Commissioner of the Department of Labor. Thank you for the opportunity to address certain concerns of my Agency regarding this bill.

The Connecticut Labor Department ("CTDOL") is compelled to oppose this bill, as drafted, because it is not in conformity with federal law.

The federal-state unemployment program was created by the Social Security Act ("SSA") of 1935, and is a federal-state partnership based on federal law but administered by state employees under state law. The SSA and the Federal Unemployment Tax Act ("FUTA") set forth broad coverage provisions, and each state must design its Unemployment Compensation (UC) program within the framework of the federal requirements. If a state law is not in conformity with federal law, the result is the loss of certification for tax credits for all employers (mostly private sector) liable for the \$3301 FUTA tax, and there is also the potential for loss of federal administrative funding to the State of Connecticut. Accordingly, state unemployment compensation statutes must conform to the SSA and FUTA.

Generally speaking, FUTA §3304(a)(6)(A) requires states to pay UC for services performed by governmental entities with only certain exceptions. One such exception (when UC does not have to be paid) is:

for employees of an educational institution between academic terms, vacation periods and holiday recesses if such employees have a "reasonable assurance" of performing services in such educational employment in the following year or term.

The CTDOL has been advised by federal conformity officials that the instant proposed bill does not conform to federal law in several important ways:

- (1) The concept of "reasonable assurance" cannot be applied *solely* to institutions of higher learning, but rather extends to all professional and nonprofessional employees of elementary and secondary schools;

- (2) The concept of "reasonable assurance" applies to *any* type of service in an instructional, research or principal administrative capacity, (e.g., "crossover" offers where an administrative employee receives assurance of employment in an instructional capacity is permissible);
- (3) It is permissible for a "reasonable assurance" to exist based on a *bona fide* offer of employment which is based on certain contingencies such as the availability of funding and class size; and
- (4) Each offer of employment must be viewed on a case-by-case basis.

Based on the federal conformity requirements cited above, the CTDOL must oppose this bill as currently drafted.

Thank you for the opportunity to provide this testimony. Please feel free to contact me or my staff if you need additional information.