



House of Representatives

General Assembly

File No. 308

January Session, 2021

Substitute House Bill No. 6582

House of Representatives, April 7, 2021

The Committee on Higher Education and Employment Advancement reported through REP. ELLIOTT of the 88th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING UNEMPLOYMENT BENEFITS FOR ADJUNCT FACULTY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (d) of section 31-227 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July 1,*
3 *2021*):

4 (d) (1) Benefits based on service in employment defined in
5 [subdivisions (1) (C) and (D)] subparagraphs (C) and (D) of subdivision
6 (1) of subsection (a) of section 31-222 shall be payable in the same
7 amount, on the same terms and subject to the same conditions as
8 compensation payable on the basis of other service subject to this
9 chapter; except that [(1)] (A) with respect to weeks of unemployment
10 beginning after December 31, 1977, benefits shall not be paid based on
11 service performed in an instructional, research or principal
12 administrative capacity for an educational institution for any week of
13 unemployment commencing during the period between two successive
14 academic years, or during a similar period between two regular terms,
15 whether or not successive, or during a period of paid sabbatical leave

16 provided for in the individual's contract, to any individual if such
17 individual performs such services in the first of such academic years [(or
18 terms)] or terms and if there is a contract or a reasonable assurance that
19 such individual will perform services in any such capacity for any
20 educational institution in the second of such academic years or terms
21 pursuant to the provisions of subdivisions (2) and (3) of this subsection;
22 [(2)] (B) with respect to weeks of unemployment beginning after
23 October 29, 1983, for service performed in any other capacity for an
24 educational institution, benefits shall not be paid on the basis of such
25 services to any individual for any week which commences during a
26 period between two successive academic years or terms if such
27 individual performs such services in the first of such academic years or
28 terms and there is a reasonable assurance that such individual will
29 perform such services in the second of such academic years or terms,
30 except that if benefits are denied to any individual under this
31 subdivision and such individual is not offered an opportunity to
32 perform such services for the educational institution for the second of
33 such academic years or terms, such individual shall be entitled to a
34 retroactive payment of benefits for each week for which the individual
35 filed a timely claim for benefits and for which benefits were denied
36 solely by reason of this subdivision; [(3)] (C) with respect to weeks of
37 unemployment beginning after March 31, 1984, for services described in
38 [subdivisions (1) and (2)] subparagraphs (A) and (B) of this subdivision,
39 benefits shall not be payable on the basis of such services to any
40 individual for any week which commences during an established and
41 customary vacation period or holiday recess if such individual performs
42 such services in the period immediately before such vacation period or
43 holiday recess and there is a reasonable assurance that such individual
44 will perform such services in the period immediately following such
45 vacation period or holiday recess; [(4)] (D) with respect to weeks of
46 unemployment beginning after March 31, 1984, for services described in
47 [subdivisions (1) and (2)] subparagraphs (A) and (B) of this subdivision,
48 benefits shall not be payable on the basis of such services under the
49 circumstances prescribed in [subdivisions (1), (2) and (3)]
50 subparagraphs (A) to (C), inclusive, of this subdivision to any individual

51 who performed such services in an educational institution while in the
52 employ of an educational service agency. For purposes of this
53 subdivision the term "educational service agency" means a
54 governmental agency or governmental entity which is established and
55 operated exclusively for the purpose of providing such services to one
56 or more educational institutions.

57 (2) With respect to the services performed in an instructional,
58 research or principal administrative capacity, as set forth in
59 subparagraph (A) of subdivision (1) of this subsection, by an individual
60 for an institution of higher education in the state, the administrator, as
61 defined in subsection (c) of section 31-222, shall determine whether such
62 individual has reasonable assurance of performing such services in the
63 second of two succeeding academic years or terms pursuant to the
64 circumstances prescribed in subparagraph (A) of subdivision (1) of this
65 subsection or in the period immediately following a customary vacation
66 period or holiday recess pursuant to the circumstances prescribed in
67 subparagraph (C) of subdivision (1) of this subsection on a case-by-case
68 basis. Reasonable assurance shall be established if (A) the institution of
69 higher education has made an offer of employment to such individual
70 for the second academic year or term or for the period following a
71 customary vacation period or holiday recess, whether such offer is
72 written, oral or implied, (B) such offer was made by an employee of the
73 institution of higher education with authority to make such offer, (C)
74 such offer is for services in the same capacity as the services the
75 individual provided in the first academic year or term or in the period
76 before a customary vacation period or holiday recess, (D) the wages or
77 salary in such offer are in an amount not less than ninety per cent of the
78 amount paid to such individual during the first academic year or term
79 or during the period before a customary vacation period or holiday
80 recess, (E) such offer is not contingent on factors within the control of
81 the institution of higher education, including, but not limited to, course
82 programming, allocation of available funding, program modifications
83 or facility availability, and (F) it is highly probable that such individual
84 will provide services in the same capacity during the second academic
85 year or term or during the period following a customary vacation period

86 or holiday recess based on the totality of circumstances of the case,
87 including, but not limited to, availability of funding, past enrollment
88 levels, the individual's level of seniority and the nature of the
89 contingencies on the offer.

90 (3) Not later than ten days before the last day of an academic year or
91 term, each institution of higher education in the state shall submit to the
92 Labor Department, in the form and manner prescribed by the
93 administrator, (A) a list of individuals who performed services in an
94 instructional, research or principal administrative capacity, as set forth
95 in subparagraph (A) of subdivision (1) of this subsection, for such
96 institution and who do not have a reasonable assurance of providing
97 such services in the same capacity during the second academic year or
98 term or during the period following a customary vacation period or
99 holiday recess, including such individual's name and Social Security
100 number, and (B) a list of individuals who performed such services
101 described in subparagraph (A) of subdivision (1) of this subsection, for
102 such institution and who have a reasonable assurance of providing such
103 services in the same capacity during the second academic year or term
104 or during the period following a customary vacation period or holiday
105 recess, with a description of the manner in which reasonable assurance
106 was provided to such individual, including, but not limited to, (i)
107 whether an offer was made in writing, orally or implied, (ii) the nature
108 of any contingencies in the offer, and (iii) the information about the offer
109 communicated to the individual. Such information may be considered
110 by the administrator, but shall not, on its own, demonstrate conclusive
111 evidence regarding reasonable assurance in any case.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2021	31-227(d)

HED *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 22 \$	FY 23 \$
Board of Regents for Higher Education	Various - Cost	39,529	40,714
Board of Regents for Higher Education	Various - Potential Cost	Potential Significant	Potential Significant
UConn	Various - Potential Cost	Potential Significant	Potential Significant

Note: Various=Various

Municipal Impact: None

Explanation

The bill establishes a new process regarding potential eligibility for unemployment among college and university adjunct instructors. The bill results in a potential significant annual cost to the constituent units, beginning in FY 22, associated with the possibility of increased unemployment claims. The significant cost is potential because the Connecticut Department of Labor ultimately determines whether to grant unemployment benefits. The bill also results in costs to the Board of Regents of \$39,529 in FY 22 and \$40,714 in FY 23, associated with the addition of personnel needed to comply with the bill.

The potential significant cost related to unemployment benefits is borne by the constituent units because as reimbursable employers, the units do not pay unemployment insurance taxes. Rather, they reimburse the state Unemployment Insurance Trust Fund dollar-for-dollar on all benefits paid for former employees.

The potential significant cost to the Board of Regents institutions is based on adjunct employment information for each fall and spring semester since fall 2019. Every semester, between 885 and 1,037 adjuncts did not return from the prior semester and therefore could potentially be determined as eligible for unemployment benefits under the bill, as they may have lacked "reasonable assurance" of returning to a similar position. However, the bill's criteria for "reasonable assurance" includes that the person's position is not contingent on course programming, and it is possible that at least some adjunct contracts are contingent; if so, then the reach of the bill expands. Similarly, the bill requires the "reasonable assurance" information on each adjunct to be submitted ten days before the end of every term, and if adjuncts typically do not have next-term offers at that point, then it is possible more adjuncts would be potentially eligible.

The cost to the Board of Regents is associated with the hiring of a 0.5 FTE Data Analyst I at anticipated costs of \$39,529 in FY 22 and \$40,714 in FY 23. The FY 22 costs consist of \$20,212 in wages and \$19,317 in benefits, with FY 23 costs of \$20,818 in wages and \$19,896 in fringe benefits.¹ The data analyst will be responsible for gathering and submitting the required information on each adjunct employed by a Board of Regents institution, ten days before every term, as the bill mandates. The Board of Regents institutions annually employs between 3,400 and 4,500 adjuncts annually. Because the University of Connecticut has fewer adjuncts, between 630 and 700 per term, it is anticipated the university will handle the bill's responsibilities using existing resources.

The potential significant cost to the University of Connecticut (UConn) is also associated with the possibility of newly paying unemployment compensation to some adjuncts due to the bill. Data

¹ The fringe benefit costs for employees funded out of other appropriated funds are budgeted within the fringe benefit account of those funds, as opposed to the fringe benefit accounts within the Office of the State Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes for other appropriated fund employees is 95.57% of payroll in FY 22 and FY 23.

regarding the number of UConn adjuncts who do not return for the next semester were unavailable.

The extent of the bill's potential costs to the constituent units will depend on numerous factors regarding the adjuncts who are determined to lack reasonable assurance. These factors include but are not limited to the pay rates of the adjuncts (approximately \$1,000 biweekly, on average, with individual variation due to teaching load) and whether the potentially eligible adjuncts file for unemployment benefits.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation in adjunct pay rates and the number of adjuncts employed by the constituent units.

OLR Bill Analysis**sHB 6582*****AN ACT CONCERNING UNEMPLOYMENT BENEFITS FOR ADJUNCT FACULTY.*****SUMMARY**

By law, Connecticut higher education institutions' instructional, research, or principal administrative employees are ineligible to receive unemployment benefits for weeks of unemployment (1) between two successive academic years; (2) between two regular terms, whether or not they are successive; or (3) during a customary vacation period or holiday recess, if they are likely to be rehired. The labor commissioner makes this ineligibility determination based on whether the employee has a contract or a "reasonable assurance" that he or she will work in any capacity for any educational institution in the subsequent academic year or term or period following the vacation or holiday recess.

This bill requires the commissioner to determine on a case-by-case basis whether there is reasonable assurance for these higher education employees' rehiring. It establishes multiple factors that must collectively be present for the commissioner to find that reasonable assurance exists.

Lastly, the bill creates new reporting duties for higher education institutions, requiring them to submit two employee lists to the Department of Labor (DOL) at the end of an academic year or term to help inform the commissioner's reasonable assurance findings.

EFFECTIVE DATE: July 1, 2021

REASONABLE ASSURANCE DETERMINATION

Under the bill, the labor commissioner must find that several factors are present when finding reasonable assurance that a higher education employee is likely to be rehired and thereby ineligible to receive unemployment benefits. These factors are as follows:

1. the higher education institution has made a written, oral, or implied employment offer to the person for the second academic year or term or for the period after a customary vacation period or holiday recess;
2. this offer was made by an employee of the institution who has the authority to make this offer;
3. this offer is for the same type of services the person provided and for wages or a salary that equals at least 90% of the amount paid to the person in the first academic year or term or in the period before the customary vacation or holiday recess;
4. this offer is not contingent on factors within the institution's control, including course programming, available funding allocation, program modifications, or facility availability; and
5. it is highly probable that the person will provide services in the same capacity during the second academic year or term or during the period following a customary vacation period or holiday recess, including funding availability, past enrollment levels, the person's seniority level, and the nature of the contingencies on the offer.

HIGHER EDUCATION EMPLOYEE LISTS

Under the bill, Connecticut higher education institutions must submit two employee lists to DOL at least 10 days before the last day of an academic year or term. The first list must contain the names and social security numbers of people who (1) served in an instructional, research, or principal administrative capacity for the institution and (2) do not have reasonable assurance of providing the same services in the same capacity during the second academic year or term or after a customary vacation period or holiday recess.

The second list must contain employees who performed the same services and do have reasonable assurance of providing these services in the same capacity during the same period described above. However,

the second list must also describe how the institution provided reasonable assurance to these employees, including (1) whether an offer was made in writing, orally, or implied; (2) the nature of any offer contingencies; and (3) the information about the offer communicated to the employee.

The bill allows the labor commissioner to consider these two lists when making reasonable assurance determinations, but it prohibits the lists from serving as conclusive evidence of reasonable assurance in any case.

COMMITTEE ACTION

Higher Education and Employment Advancement Committee

Joint Favorable Substitute

Yea 19 Nay 3 (03/22/2021)