



# House of Representatives

General Assembly

**File No. 502**

January Session, 2023

Substitute House Bill No. 6791

*House of Representatives, April 11, 2023*

The Committee on Labor and Public Employees reported through REP. SANCHEZ, E. of the 24th 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 HIGHER EDUCATION 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2 repealed and the following is substituted in lieu thereof (*Effective October*  
3 *1, 2023*):

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,  
19 subject to the provisions of subdivisions (2) and (3) of this subsection,  
20 that such individual will perform services in any such capacity for any  
21 educational institution in the second of such academic years or terms;  
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] subparagraph and such individual is not offered an  
32 opportunity to perform such services for the educational institution for  
33 the second of such academic years or terms, such individual shall be  
34 entitled to a retroactive payment of benefits for each week for which the  
35 individual filed a timely claim for benefits and for which benefits were  
36 denied solely by reason of this [subdivision; (3)] subparagraph; (C) with  
37 respect to weeks of unemployment beginning after March 31, 1984, for  
38 services described in [subdivisions (1) and (2)] subparagraphs (A) and  
39 (B) of this subdivision, benefits shall not be payable on the basis of such  
40 services to any individual for any week which commences during an  
41 established and customary vacation period or holiday recess if such  
42 individual performs such services in the period immediately before  
43 such vacation period or holiday recess and there is a reasonable  
44 assurance that such individual will perform such services in the period  
45 immediately following such vacation period or holiday recess; [(4)] and  
46 (D) with respect to weeks of unemployment beginning after March 31,  
47 1984, for services described in [subdivisions (1) and (2)] subparagraphs  
48 (A) and (B) of this subdivision, benefits shall not be payable on the basis

49 of such services under the circumstances prescribed in [subdivisions (1),  
50 (2) and (3)] subparagraphs (A) to (C), inclusive, of this subdivision to  
51 any individual who performed such services in an educational  
52 institution while in the employ of an educational service agency. For  
53 purposes of this subdivision the term "educational service agency"  
54 means a governmental agency or governmental entity which is  
55 established and operated exclusively for the purpose of providing such  
56 services to one or more educational institutions.

57 (2) The administrator shall, on a case-by-case basis, determine  
58 whether an individual who performs services described in  
59 subparagraph (A) of subdivision (1) of this subsection for an institution  
60 of higher education in the state, as defined in section 3-22a, has  
61 reasonable assurance that such individual will perform such services for  
62 such institution in any such capacity in the second of two succeeding  
63 academic years or terms pursuant to subparagraph (A) of subdivision  
64 (1) of this subsection or in the period immediately following an  
65 established or customary vacation period or holiday recess pursuant to  
66 subparagraph (C) of subdivision (1) of this subsection. Such reasonable  
67 assurance shall be established when:

68 (A) Such institution has made a written, oral or implied offer of  
69 employment to such individual for either the second academic year or  
70 term or for the period following an established or customary vacation  
71 period or holiday recess;

72 (B) Such offer was made by an employee of such institution with  
73 authority to make such offer;

74 (C) Such offer is for services in the same capacity as the services such  
75 individual performed for such institution in the first academic year or  
76 term or in the period before an established or customary vacation period  
77 or holiday recess;

78 (D) The wages or salary in such offer are in an amount not less than  
79 ninety per cent of the amount paid to such individual during the first  
80 academic year or term or during the period before an established or

81 customary vacation period or holiday recess;

82 (E) Such offer is not contingent on factors within the control of such  
83 institution of higher education, including, but not limited to, course  
84 programming, allocation of available funding, program modifications  
85 or facility availability; and

86 (F) Based on the totality of the circumstances, it is highly probable  
87 that such individual will provide services for such institution in the  
88 same capacity during the second academic year or term or during the  
89 period following an established or customary vacation period or  
90 holiday recess, including, but not limited to, availability of funding, past  
91 enrollment levels, the individual's level of seniority and the nature of  
92 the contingencies on the offer.

93 (3) Not later than ten days prior to the last day of an academic year  
94 or term, each institution of higher education in the state shall submit to  
95 the Labor Department, in the form and manner prescribed by the  
96 administrator, the following:

97 (A) A list of individuals who performed services described in  
98 subparagraph (A) of subdivision (1) of this subsection for the institution  
99 who have not been given reasonable assurance that such individuals  
100 will perform such services in the same capacity during the second  
101 academic year or term or during the period following an established or  
102 customary vacation period or holiday recess; and

103 (B) A list of individuals who performed services described in  
104 subparagraph (A) of subdivision (1) of this subsection for the institution  
105 who have been given reasonable assurance that such individuals will  
106 perform such services in the same capacity during the second academic  
107 year or term or during the period following an established or customary  
108 vacation period or holiday recess. Such list shall include a description of  
109 the manner in which such reasonable assurance was provided to each  
110 individual listed, including, but not limited to, (i) whether an offer was  
111 made in writing, orally or implied, (ii) the nature of any contingencies  
112 in the offer, and (iii) the information communicated to the individual

113 about the offer. Such information may be considered by the  
 114 administrator in the administrator's determination of reasonable  
 115 assurance pursuant to subdivision (2) of this subsection, provided no  
 116 such information that is not accompanied by additional evidence shall  
 117 be conclusive evidence regarding the provision of reasonable assurance  
 118 in any case.

119 (4) If an institution of higher education in the state gives an individual  
 120 reasonable assurance that is not honored in the subsequent academic  
 121 term, unemployment compensation shall be retroactive to the date of  
 122 such institution's attestation of reasonable assurance or the date that  
 123 attestation of assurance is required if such individual is otherwise  
 124 eligible for unemployment compensation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2023	31-227(d)

**LAB**      *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 24 \$	FY 25 \$
UConn	Various - Cost	122,046	122,046
UConn	Various - Cost	Potential Significant	Potential Significant
Board of Regents for Higher Education	Various - Cost	41,113	41,113
Board of Regents for Higher Education	Various - Cost	Potential Significant	Potential Significant
Labor Dept.	GF - Cost	33,500	8,000

Note: Various=Various; GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill establishes a new process regarding potential eligibility for unemployment among all college and university adjunct instructors. The bill results in a potential significant cost to the constituent units, beginning in FY 24, 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. However, the bill is likely to result in unemployment benefits for at least some adjuncts, particularly for the Board of Regents.

The bill also results in annual costs, beginning in FY 24, of \$122,046 to UConn and \$41,113 to the Board of Regents, associated with the addition of personnel needed to comply with the bill's requirements to submit lists of adjuncts regarding potential eligibility for unemployment benefits. Additionally, costs are expected to the Department of Labor (DOL) of approximately \$33,500 in FY 24,

associated with staff time (\$18,500) and consulting costs (\$15,000) for information technology upgrades to the UI administration system, with ongoing annual costs of \$8,000 for consulting.

**Unemployment benefits.** 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 bill establishes that "reasonable assurance" of similar future employment for adjuncts and other higher education employees is met - and unemployment is less likely to be required - if, among other criteria: (1) the contract is not contingent on course programming, and (2) a contract for the next term is in place at least ten days before the end of the current term. Those who lack reasonable assurance may potentially be considered eligible for unemployment benefits, and those who are determined to have reasonable assurance but are not re-hired may seek unemployment benefits.

Due to the bill's reasonable assurance standards, the Board of Regents institutions anticipate potentially needing to pay unemployment costs for nearly all its adjuncts, for, at minimum, the periods between academic terms. Each semester, the Board of Regents institutions employ between approximately 3,400 and 4,350 adjuncts, based on semester information from fall 2019 through spring 2022. Between 76 and 84 percent of adjuncts (ranging from approximately 2,900 to 3,400 individuals) were returning after teaching the prior semester. Adjunct contracts offered by the Board of Regents typically are contingent and at least sometimes are not offered in the listed timeframe. Consequently, many Board of Regents adjuncts could be assessed by the labor department as lacking reasonable assurance, and therefore potentially eligible for unemployment.

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. In FY 22,

approximately 850 adjuncts were employed by UConn; of these, approximately 670 did not have multi-year contracts and therefore could have been assessed as lacking reasonable assurance.

The extent of the bill's potential costs to the constituent units will depend on numerous factors regarding the adjuncts who are determined by the labor department to be eligible for unemployment. These factors include but are not limited to whether the persons file for unemployment, gross wages over the year from all sources, and family size. The pay rates of adjuncts were approximately \$1,050 biweekly on average for the Board of Regents in FY 22, with average semester earnings of \$8,546 for FY 20 through FY 22. At UConn in FY 22, on average adjuncts were teaching 4.2 credits in a semester at an average rate of \$2,078 per credit, for average semester earnings of \$8,750.

**Unemployment Insurance (UI) Administration Costs.** The bill results in a General Fund cost to the Department of Labor (DOL) of approximately \$33,500 in FY 24 associated with staff time (\$18,500) and consulting costs (\$15,000) for information technology upgrades to the UI administration system. These resources will enable the incorporation of lists from higher education institutions in determining whether employees have a "reasonable assurance" of returning to the institution that employed them.<sup>1</sup>

Beginning in FY 25 it is anticipated the agency can accommodate the requirements of the bill with consultants only, estimated at a cost of approximately \$8,000 annually.

**Constituent Unit Personnel.** The annual cost to UConn is associated with the hiring of two 0.5 FTE program managers at anticipated costs totaling \$122,046 in FY 24, consisting of \$60,000 in wages and \$62,046 in

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<sup>1</sup> Per the United States Department of Labor, lists provided by higher education institutions of employees that do and do not have "reasonable assurances" cannot be the sole determining factor for eligibility and the state still must make individual determinations on the existence or nonexistence of reasonable assurance.



fringe benefits<sup>2</sup>. These staff will be responsible for working with department chairs and other personnel to gather and submit the required information on each adjunct employed by the university. The annual cost to the Board of Regents for personnel to carry out the bill's duties are estimated to total \$41,113 consisting of \$20,212 in wages for a 0.5 FTE Data Analyst I and fringe benefits of \$20,901. It is anticipated that accomplishing the bill's list duties will require more time for UConn than the Board of Regents, as it is expected that at least some UConn adjuncts may meet the reasonable assurance standard and therefore UConn will need to compile more-detailed information.

These increased personnel costs may be funded by either the General Fund or other constituent unit revenues (e.g., tuition). If the new positions are funded through the General Fund, then the fringe benefits costs will be incurred within the Office of the State Comptroller.

### ***The Out Years***

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

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<sup>2</sup> 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 103.41% of payroll in FY 23.

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**OLR Bill Analysis****sHB 6791*****AN ACT CONCERNING UNEMPLOYMENT BENEFITS FOR  
ADJUNCT HIGHER EDUCATION FACULTY.*****SUMMARY**

By law, employees who work in an instructional, research, or principal administrative capacity at an educational institution are ineligible to receive unemployment benefits for a school break (i.e., between two successive academic years, between two regular terms, or during a customary vacation or holiday recess) if they have a “reasonable assurance” to work for any educational institution once courses resume (i.e., in the subsequent academic year or term or period following the vacation or holiday recess).

This bill creates a process for determining whether those employees at certain higher education institutions have a reasonable assurance of returning to the institution that employed them once courses resume. It requires the labor commissioner to make these determinations on a case-by-case basis and specifies multiple factors that must all be present for the commissioner to find that reasonable assurance exists.

It also creates new reporting duties for these higher education institutions, requiring them to give the Department of Labor (DOL) lists of employees who have and don't have reasonable assurance of returning at the end of an academic year or term.

The higher education institutions covered by the bill are (1) UConn, (2) the Connecticut State Colleges and Universities, and (3) any other non-profit institution established in Connecticut (a) that has degree-granting authority and its main campus in the state and (b) whose primary function is not preparing students for religious vocation.

EFFECTIVE DATE: October 1, 2023

### **REASONABLE ASSURANCE DETERMINATION**

The bill requires the labor commissioner to determine, on a case-by-case basis, that all of the following factors are present to establish that a higher education institution employee is ineligible for unemployment benefits because he or she has reasonable assurance to return once courses resume:

1. the institution made a written, oral, or implied offer to employ the person once courses resume;
2. the offer was made by an employee of the institution who is authorized to make it;
3. the offer is for (a) services in the same capacity the employee performed before the break and (b) at least 90% of the wages or a salary that the institution paid for it;
4. the offer does not depend 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 work in the same capacity once courses resume, based on the totality of the circumstances, including funding availability, past enrollment levels, the person's seniority level, and the nature of the contingencies on the offer.

### **HIGHER EDUCATION EMPLOYEE LISTS**

The bill requires higher education institutions to submit two employee lists to the DOL, in a way the labor commissioner sets, at least 10 days before the end of an academic year or term. The first must list employees 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 once courses resume.

The second list must contain employees who performed the same services and have reasonable assurance of providing these services in the same capacity once courses resume. The list must also describe how the institution gave 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 the information on these lists when making reasonable assurance determinations, but unless it is accompanied by additional evidence, it cannot be conclusive evidence of reasonable assurance in any case.

If an institution gives someone a reasonable assurance of returning but does not honor it once courses resume, the bill specifies that the person’s unemployment benefits must be retroactive to either the (1) date of the institution’s attestation of reasonable assurance or (2) date the attestation of assurance is required (presumably, the deadline for submitting the lists required by the bill) if the person is otherwise eligible for unemployment benefits.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 8      Nay 4      (03/23/2023)