

## **BILL ANALYSIS**

C.S.H.B. 2035

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Economic & Small Business Development  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Workforce Commission administers the shared work unemployment compensation program. According to interested parties, the shared work unemployment compensation program offers employers an opportunity to avoid temporary layoffs of employees by reducing two or more affected employees' hours and allowing those employees to receive unemployment compensation benefits as a replacement for the loss of pay caused by the reduced hours. However, recent federal legislation reportedly changed to the law relating to these types of programs, thus requiring states to change their respective laws to be in accordance with federal law. One of the consequences of failing to make this change in Texas statutes would result in Texas employers losing a substantial unemployment tax credit. C.S.H.B. 2035 seeks to make necessary changes to bring state law into compliance with federal law, preserving an important layoff-aversion tool and ensuring continuation of the federal unemployment tax credit for Texas employers.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2035 amends the Labor Code to prohibit shared work benefits paid under the shared work unemployment compensation program from being charged to the account of an employer if the benefits are reimbursed by the federal government under the federal Layoff Prevention Act of 2012.

C.S.H.B. 2035 authorizes the Texas Workforce Commission (TWC) to approve a shared work plan if the plan, as one of the conditions the plan must meet for approval, describes how the employees in the affected unit will be notified in advance of the plan, if feasible; provides an estimate of the number of employees who would be laid off if the employer does not participate in the shared work plan; and permits eligible employees to participate in training. The bill authorizes TWC to approve a shared work plan if an employer, as one of the conditions the employer must meet for plan approval, certifies that participation in the shared work plan is consistent with the employer's obligations under state and federal law and agrees to furnish any information the U.S. secretary of labor determines is appropriate to those conditions.

C.S.H.B. 2035 removes from the conditions for plan approval the condition that the plan describe the manner in which the participating employer treats the fringe benefits of each employee in the affected unit and instead requires the employer to certify that, if the employer currently provides fringe benefits, the fringe benefits continue for employees in the affected unit unless those benefits are not continued for employees not participating in the shared work plan. The bill revises the condition for approval regarding the employer certification of the implementation of a shared work plan and the resulting reduction in work hours by specifying that such plan and resulting reduction in work hours is in lieu of layoffs, rather than in lieu of

temporary layoffs, that would affect at least 10 percent of the employees in the affected unit and result in an equivalent reduction in work hours. The bill removes the prohibition against a shared work plan being implemented to subsidize an employer who traditionally has used part-time employees.

### EFFECTIVE DATE

September 1, 2013.

### COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2035 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Section 204.022, Labor Code, is amended.

SECTION 2. Section 215.001, Labor Code, is amended.

SECTION 3. Section 215.022(a), Labor Code, is amended to read as follows:

(a) The commission may approve a shared work plan if:

(1) the plan:

(A) applies to and identifies a specific affected unit;

(B) identifies the employees in the affected unit by name and social security number and describes how the employees will be notified in advance of the plan, if feasible;

(C) provides an estimate of the number of employees who would be laid off if the employer does not participate in the shared work plan;

(D) [~~(C)~~] reduces the normal weekly hours of work for an employee in the affected unit by at least 10 percent but not more than 40 percent;

(E) [~~(D)~~] applies to at least 10 percent of the employees in the affected unit; and

(F) permits eligible employees, at the discretion of the employer, to participate in training [~~(E) describes the manner in which the participating employer treats the fringe benefits of each employee in the~~

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Section 215.022, Labor Code, is amended to read as follows:

Sec. 215.022. **REQUIREMENTS OF SHARED WORK PLAN.**

(a) The commission may approve a shared work plan if:

(1) the plan:

(A) applies to and identifies a specific affected unit;

(B) identifies the employees in the affected unit by name and social security number and describes how the employees will be notified in advance of the plan, if feasible;

(C) provides an estimate of the number of employees who would be laid off if the employer does not participate in the shared work plan;

(D) [~~(C)~~] reduces the normal weekly hours of work for an employee in the affected unit by at least 10 percent but not more than 40 percent;

(E) [~~(D)~~] applies to at least 10 percent of the employees in the affected unit; and

(F) permits eligible employees to participate in training [~~(E) describes the manner in which the participating employer treats the fringe benefits of each employee in the affected unit];~~

~~affected unit~~];

(2) the employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of [~~temporary~~] layoffs that would:

(A) affect at least 10 percent of the employees in the affected unit; and

(B) result in an equivalent reduction in work hours; [~~and~~]

(3) the employer certifies that:

(A) if the employer currently provides fringe benefits, the fringe benefits continue for employees in the affected unit unless those benefits are not continued for employees not participating in the shared work plan; and

(B) participation in the shared work plan is consistent with the employer's obligations under state and federal law; and

(4) the employer agrees to furnish the commission reports relating to the operation of the plan as requested by the commission and any other information the United States secretary of labor determines is appropriate.

(2) the employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of [~~temporary~~] layoffs that would:

(A) affect at least 10 percent of the employees in the affected unit; and

(B) result in an equivalent reduction in work hours; [~~and~~]

(3) the employer certifies that:

(A) if the employer currently provides fringe benefits, the fringe benefits continue for employees in the affected unit unless those benefits are not continued for employees not participating in the shared work plan; and

(B) participation in the shared work plan is consistent with the employer's obligations under state and federal law; and

(4) the employer agrees to furnish the commission reports relating to the operation of the plan as requested by the commission and any other information the United States secretary of labor determines is appropriate.

~~(b) A shared work plan may not be implemented to subsidize a seasonal employer during the off-season [or to subsidize an employer who traditionally has used part-time employees].~~

SECTION 4. The change in law made by this Act applies only to a shared work plan submitted by an employer to the Texas Workforce Commission on or after the effective date of this Act. A shared work plan submitted before the effective date of this Act is governed by the law in effect on the date the plan was submitted, and the former law is continued in effect for that purpose.

SECTION 4. Same as introduced version.

SECTION 5. This Act takes effect September 1, 2013.

SECTION 5. Same as introduced version.