

111TH CONGRESS
2D SESSION

S. 3753

To provide for the treatment and temporary financing of short-time compensation programs.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2010

Mr. REED (for himself, Mrs. SHAHEEN, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for the treatment and temporary financing of short-time compensation programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Preventing Unemployment Act of 2010”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Treatment of short-time compensation programs.
- Sec. 3. Temporary financing of certain short-time compensation payments.
- Sec. 4. Temporary Federal short-time compensation.
- Sec. 5. Grants for implementation of State short-time compensation programs.

Sec. 6. Assistance and guidance in implementing programs.

Sec. 7. Reports.

1 **SEC. 2. TREATMENT OF SHORT-TIME COMPENSATION PRO-**
 2 **GRAMS.**

3 (a) DEFINITION.—

4 (1) IN GENERAL.—Section 3306 of the Internal
 5 Revenue Code of 1986 (26 U.S.C. 3306) is amended
 6 by adding at the end the following new subsection:

7 “(v) SHORT-TIME COMPENSATION PROGRAM.—For
 8 purposes of this chapter, the term ‘short-time compensa-
 9 tion program’ means a program under which—

10 “(1) the participation of an employer is vol-
 11 untary;

12 “(2) an employer reduces the number of hours
 13 worked by employees in lieu of temporary layoffs;

14 “(3) such employees whose workweeks have
 15 been reduced by at least 10 percent, and by not
 16 more than the percentage, if any, that is determined
 17 by the State to be appropriate, are eligible for unem-
 18 ployment compensation;

19 “(4) the amount of unemployment compensa-
 20 tion payable to any such employee is a pro rata por-
 21 tion of the unemployment compensation which would
 22 be payable to the employee if such employee were to-
 23 tally unemployed;

1 “(5) such employees are not expected to meet
2 the availability for work or work search test require-
3 ments while collecting short-time compensation bene-
4 fits, but are required to be available for their normal
5 workweek;

6 “(6) eligible employees may participate, as ap-
7 propriate, in an employer-sponsored training pro-
8 gram to enhance job skills if such program has been
9 approved by the State agency;

10 “(7) the State agency shall require an employer
11 to certify that the employer will continue to provide
12 health benefits and retirement benefits under a de-
13 fined benefit plan (as defined in section 414(j)) and
14 contributions under a defined contribution plan (as
15 defined in section 414(i)) to any employee whose
16 workweek is reduced under the program under the
17 same terms and conditions as though the workweek
18 of such employee had not been reduced;

19 “(8) the State agency shall require an employer
20 (or an employer’s association which is party to a col-
21 lective bargaining agreement) to submit a written
22 plan describing the manner in which the require-
23 ments of this subsection will be implemented and
24 containing such other information as the Secretary
25 of Labor determines is appropriate;

1 “(9) in the case of employees represented by a
 2 union, the appropriate official of the union has
 3 agreed to the terms of the employer’s written plan
 4 and implementation is consistent with employer obli-
 5 gations under the National Labor Relations Act; and

6 “(10) only such other provisions are included in
 7 the State law as the Secretary of Labor determines
 8 appropriate for purposes of a short-term compensa-
 9 tion program.”.

10 (2) EFFECTIVE DATE.—

11 (A) IN GENERAL.—Except as provided in
 12 subparagraph (B), the amendment made by
 13 paragraph (1) shall take effect on the date of
 14 the enactment of this Act.

15 (B) DELAY PERMITTED.—In the case of a
 16 State that is administering a short-time com-
 17 pensation program as of the date of the enact-
 18 ment of this Act and the State law cannot be
 19 administered consistent with the amendment
 20 made by paragraph (1), such amendment shall
 21 take effect on the earlier of—

22 (i) the date the State changes its
 23 State law in order to be consistent with
 24 such amendment; or

1 (ii) the date that is 2 years after the
 2 date of the enactment of this Act.

3 (b) CONFORMING AMENDMENTS.—

4 (1) INTERNAL REVENUE CODE OF 1986.—

5 (A) Subparagraph (E) of section
 6 3304(a)(4) of the Internal Revenue Code of
 7 1986 is amended to read as follows:

8 “(E) amounts may be withdrawn for the
 9 payment of short-time compensation under a
 10 short-time compensation program (as defined
 11 under section 3306(v));”.

12 (B) Subsection (f) of section 3306 of the
 13 Internal Revenue Code of 1986 is amended—

14 (i) by striking paragraph (5) (relating
 15 to short-term compensation) and inserting
 16 the following new paragraph:

17 “(5) amounts may be withdrawn for the pay-
 18 ment of short-time compensation under a short-time
 19 compensation program (as defined in subsection (v));
 20 and”; and

21 (ii) by redesignating paragraph (5)
 22 (relating to self-employment assistance
 23 program) as paragraph (6).

24 (2) SOCIAL SECURITY ACT.—Section 303(a)(5)
 25 of the Social Security Act is amended by striking

1 “the payment of short-time compensation under a
 2 plan approved by the Secretary of Labor” and in-
 3 serting “the payment of short-time compensation
 4 under a short-time compensation program (as de-
 5 fined in section 3306(v) of the Internal Revenue
 6 Code of 1986)”.

7 (3) UNEMPLOYMENT COMPENSATION AMEND-
 8 MENTS OF 1992.—Subsections (b) through (d) of sec-
 9 tion 401 of the Unemployment Compensation
 10 Amendments of 1992 (26 U.S.C. 3304 note) are re-
 11 pealed.

12 **SEC. 3. TEMPORARY FINANCING OF CERTAIN SHORT-TIME**
 13 **COMPENSATION PAYMENTS.**

14 (a) PAYMENTS TO STATES.—

15 (1) IN GENERAL.—Subject to paragraph (3),
 16 there shall be paid to a State an amount equal to
 17 100 percent of the amount of short-time compensa-
 18 tion paid under a short-time compensation program
 19 (as defined in section 3306(v) of the Internal Rev-
 20 enue Code of 1986, as added by section 2(a)) under
 21 the provisions of the State law. Notwithstanding sec-
 22 tion 2(a)(2), a State administering a short-term
 23 compensation program as of the date of the enact-
 24 ment of this Act shall not be eligible to receive pay-
 25 ments under this section until the program adminis-

1 tered by such State meets the requirements of sec-
 2 tion 3306(v) of the Internal Revenue Code of 1986
 3 (as so added). Payments shall also be made for addi-
 4 tional State administrative expenses incurred (as de-
 5 termined by the Secretary).

6 (2) TERMS OF PAYMENTS.—Payments made to
 7 a State under paragraph (1) shall be payable by way
 8 of reimbursement in such amounts as the Secretary
 9 estimates the State will be entitled to receive under
 10 this section for each calendar month, reduced or in-
 11 creased, as the case may be, by any amount by
 12 which the Secretary finds that the Secretary's esti-
 13 mates for any prior calendar month were greater or
 14 less than the amounts which should have been paid
 15 to the State. Such estimates may be made on the
 16 basis of such statistical, sampling, or other method
 17 as may be agreed upon by the Secretary and the
 18 State agency of the State involved.

19 (3) LIMITATIONS ON PAYMENTS.—

20 (A) GENERAL PAYMENT LIMITATIONS.—

21 No payments shall be made to a State under
 22 this section for benefits paid to an individual by
 23 the State in excess of 26 weeks of benefits.

24 (B) EMPLOYER LIMITATIONS.—No pay-

25 ments shall be made to a State under this sec-

tion for benefits paid to an individual by the State under a short-time compensation program if such individual is employed by an employer—

(i) whose workforce during the 3 months preceding the date of the submission of the employer's short-time compensation plan has been reduced by temporary layoffs of more than 20 percent; or

(ii) on a seasonal, temporary, or intermittent basis.

(b) APPLICABILITY.—Payments to a State under subsection (a) shall be available for weeks of unemployment—

(1) beginning on or after the date of the enactment of this Act; and

(2) ending on or before the date that is 3 years after the date of the enactment of this Act.

(c) FUNDING AND CERTIFICATIONS.—

(1) FUNDING.—There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

(2) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the

1 Treasury for payment to each State the sums pay-
 2 able to such State under this section.

3 (d) DEFINITIONS.—In this section:

4 (1) SECRETARY.—The term “Secretary” means
 5 the Secretary of Labor.

6 (2) STATE; STATE AGENCY; STATE LAW.—The
 7 terms “State”, “State agency”, and “State law”
 8 have the meanings given those terms in section 205
 9 of the Federal-State Extended Unemployment Com-
 10 pensation Act of 1970 (26 U.S.C. 3304 note).

11 **SEC. 4. TEMPORARY FEDERAL SHORT-TIME COMPENSA-**
 12 **TION.**

13 (a) FEDERAL-STATE AGREEMENTS.—

14 (1) IN GENERAL.—Any State which desires to
 15 do so may enter into, and participate in, an agree-
 16 ment under this section with the Secretary provided
 17 that such State’s law does not provide for the pay-
 18 ment of short-time compensation under—

19 (A) a short-time compensation program (as
 20 defined in section 3306(v) of the Internal Rev-
 21 enue Code of 1986, as added by section 2(a));
 22 or

23 (B) subsections (b) through (d) of section
 24 401 of the Unemployment Compensation
 25 Amendments Act of 1992, as in effect on the

1 day before the date of the enactment of this
2 Act.

3 (2) ABILITY TO TERMINATE.—Any State which
4 is a party to an agreement under this section may,
5 upon providing 30 days' written notice to the Sec-
6 retary, terminate such agreement.

7 (b) PROVISIONS OF FEDERAL-STATE AGREEMENT.—

8 (1) IN GENERAL.—Any agreement under this
9 section shall provide that the State agency of the
10 State will make payments of short-time compensa-
11 tion under a plan approved by the State. Such plan
12 shall provide that payments are made in accordance
13 with the requirements under section 3306(v) of the
14 Internal Revenue Code of 1986, as added by section
15 2(a).

16 (2) LIMITATIONS ON PLANS.—

17 (A) GENERAL PAYMENT LIMITATIONS.—A
18 short-time compensation plan approved by a
19 State shall not permit the payment of short-
20 time compensation in excess of 26 weeks.

21 (B) EMPLOYER LIMITATIONS.—A short-
22 time compensation plan approved by a State
23 shall not provide payments to an individual if
24 such individual is employed by an employer—

1 (i) whose workforce during the 3
2 months preceding the date of the submis-
3 sion of the employer's short-time com-
4 pensation plan has been reduced by tem-
5 porary layoffs of more than 20 percent; or

6 (ii) on a seasonal, temporary, or inter-
7 mittent basis.

8 (3) EMPLOYER PAYMENT OF COSTS.—Any
9 short-time compensation plan entered into by an em-
10 ployer must provide that the employer will pay the
11 State an amount equal to one-half of the amount of
12 short-time compensation paid under such plan. Such
13 amount shall be deposited in the State's unemploy-
14 ment fund and shall not be used for purposes of cal-
15 culating an employer's contribution rate under sec-
16 tion 3303(a)(1) of the Internal Revenue Code of
17 1986.

18 (c) PAYMENTS TO STATES.—

19 (1) IN GENERAL.—There shall be paid to each
20 State with an agreement under this section an
21 amount equal to—

22 (A) one-half of the amount of short-time
23 compensation paid to individuals by the State
24 pursuant to such agreement; and

1 (B) any additional administrative expenses
2 incurred by the State by reason of such agree-
3 ment (as determined by the Secretary).

4 (2) TERMS OF PAYMENTS.—Payments made to
5 a State under paragraph (1) shall be payable by way
6 of reimbursement in such amounts as the Secretary
7 estimates the State will be entitled to receive under
8 this section for each calendar month, reduced or in-
9 creased, as the case may be, by any amount by
10 which the Secretary finds that the Secretary's esti-
11 mates for any prior calendar month were greater or
12 less than the amounts which should have been paid
13 to the State. Such estimates may be made on the
14 basis of such statistical, sampling, or other method
15 as may be agreed upon by the Secretary and the
16 State agency of the State involved.

17 (3) FUNDING.—There are appropriated, out of
18 moneys in the Treasury not otherwise appropriated,
19 such sums as may be necessary for purposes of car-
20 rying out this section.

21 (4) CERTIFICATIONS.—The Secretary shall
22 from time to time certify to the Secretary of the
23 Treasury for payment to each State the sums pay-
24 able to such State under this section.

1 (d) APPLICABILITY.—An agreement entered into
2 under this section shall apply to weeks of unemployment—

3 (1) beginning on or after the date on which
4 such agreement is entered into; and

5 (2) ending on or before the date that is 2 years
6 after the date of the enactment of this Act.

7 (e) TRANSITION RULE.—If a State has entered into
8 an agreement under this section and subsequently enacts
9 a State law providing for the payment of short-time com-
10 pensation under a short-time compensation program (as
11 defined in section 3306(v) of the Internal Revenue Code
12 of 1986, as added by section 2(a)), the State shall not
13 be eligible for payments under this section for weeks of
14 unemployment beginning after the effective date of such
15 State law.

16 (f) DEFINITIONS.—In this section:

17 (1) SECRETARY.—The term “Secretary” means
18 the Secretary of Labor.

19 (2) STATE; STATE AGENCY; STATE LAW.—The
20 terms “State”, “State agency”, and “State law”
21 have the meanings given those terms in section 205
22 of the Federal-State Extended Unemployment Com-
23 pensation Act of 1970 (26 U.S.C. 3304 note).

1 **SEC. 5. GRANTS FOR IMPLEMENTATION OF STATE SHORT-**
2 **TIME COMPENSATION PROGRAMS.**

3 (a) GRANTS.—

4 (1) IN GENERAL.—The Secretary shall award
5 start-up grants to State agencies—

6 (A) in States that enact short-time com-
7 pensation programs (as defined in section
8 3306(v) of the Internal Revenue Code of 1986,
9 as added by section 2(a)) on or after May 1,
10 2010, for the purpose of creating such pro-
11 grams; and

12 (B) that apply for such grants not later
13 than September 30, 2012.

14 (2) AMOUNT.—The amount of a grant awarded
15 under paragraph (1) shall be an amount determined
16 by the Secretary based on the costs of implementing
17 a short-time compensation program.

18 (3) ONLY 1 GRANT PER STATE.—A State agen-
19 cy is only eligible to receive 1 grant under this sec-
20 tion.

21 (b) FUNDING.—There are appropriated, out of mon-
22 eys in the Treasury not otherwise appropriated, such sums
23 as may be necessary for purposes of carrying out this sec-
24 tion.

25 (c) REPORTING.—The Secretary may establish re-
26 porting requirements for State agencies receiving a grant

1 under this section in order to provide oversight of grant
 2 funds used by States for the creation of the short-time
 3 compensation programs.

4 (d) DEFINITIONS.—In this section:

5 (1) SECRETARY.—The term “Secretary” means
 6 the Secretary of Labor.

7 (2) STATE; STATE AGENCY.—The terms
 8 “State” and “State agency” have the meanings
 9 given those terms in section 205 of the Federal-
 10 State Extended Unemployment Compensation Act of
 11 1970 (26 U.S.C. 3304 note).

12 **SEC. 6. ASSISTANCE AND GUIDANCE IN IMPLEMENTING**
 13 **PROGRAMS.**

14 In order to assist States in establishing, qualifying,
 15 and implementing short-time compensation programs (as
 16 defined in section 3306(v) of the Internal Revenue Code
 17 of 1986, as added by section 2(a)), the Secretary of Labor
 18 shall—

19 (1) develop model legislative language which
 20 may be used by States in developing and enacting
 21 such programs and periodically review and revise
 22 such model legislative language;

23 (2) provide technical assistance and guidance in
 24 developing, enacting, and implementing such pro-
 25 grams;

1 (3) establish reporting requirements for States,
2 including reporting on—

3 (A) the number of averted layoffs;

4 (B) the number of participating companies
5 and workers; and

6 (C) such other items as the Secretary of
7 Labor determines are appropriate.

8 **SEC. 7. REPORTS.**

9 (a) INITIAL REPORT.—Not later than 4 years after
10 the date of the enactment of this Act, the Secretary of
11 Labor shall submit to Congress and to the President a
12 report or reports on the implementation of the provisions
13 of this Act, including an analysis of the significant impedi-
14 ments to State enactment and implementation of short-
15 time compensation programs (as defined in section
16 3306(v) of the Internal Revenue Code of 1986, as added
17 by section 2(a)).

18 (b) SUBSEQUENT REPORTS.—After the submission of
19 the report under subsection (a), the Secretary of Labor
20 may submit such additional reports on the implementation
21 of short-time compensation programs as the Secretary
22 deems appropriate.

23 (c) FUNDING.—There are appropriated, out of any
24 moneys in the Treasury not otherwise appropriated, to the

- 1 Secretary of Labor, \$1,500,000 to carry out this section,
- 2 to remain available without fiscal year limitation.

○