

111TH CONGRESS
1ST SESSION

S. 281

To promote labor force participation of older Americans, with the goals of increasing retirement security, reducing the projected shortage of experienced workers, maintaining future economic growth, and improving the Nation's fiscal outlook.

IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2009

Mr. KOHL introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To promote labor force participation of older Americans, with the goals of increasing retirement security, reducing the projected shortage of experienced workers, maintaining future economic growth, and improving the Nation's fiscal outlook.

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 “Health Care and Training for Older Workers Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—COBRA CONTINUATION COVERAGE

Sec. 101. Extended COBRA continuation coverage for certain older workers.

TITLE II—EMPLOYMENT AND TRAINING

Sec. 201. Definitions.

Sec. 202. Statewide employment and training activities.

Sec. 203. Local employment and training activities.

Sec. 204. Performance measures.

Sec. 205. Reporting.

Sec. 206. Incentive grants.

TITLE III—CLEARINGHOUSE OF BEST PRACTICES FOR HIRING
AND RETAINING OLDER WORKERS

Sec. 301. Establishment.

Sec. 302. Annual updates.

1 **TITLE I—COBRA CONTINUATION**
2 **COVERAGE**

3 **SEC. 101. EXTENDED COBRA CONTINUATION COVERAGE**
4 **FOR CERTAIN OLDER WORKERS.**

5 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
6 INCOME SECURITY ACT OF 1974.—Subparagraph (A) of
7 section 602(2) of the Employee Retirement Income Secu-
8 rity Act of 1974 (29 U.S.C. 1162(2)(A)) is amended by
9 adding at the end the following:

10 “(vi) SPECIAL RULE FOR CERTAIN
11 OLDER WORKERS.—

12 “(I) IN GENERAL.—Notwith-
13 standing any other provision of this
14 subparagraph, in the case of a quali-
15 fying event described in section
16 603(2) relating to a reduction of
17 hours of an employee described in

1 subclause (II), the date which is 36
2 months after the date of the quali-
3 fying event, except that the period of
4 coverage under this clause shall end
5 on the date on which the employee be-
6 comes entitled to benefits under title
7 XVIII of the Social Security Act
8 based on age.

9 “(II) EMPLOYEE DESCRIBED.—

10 An employee is described in this sub-
11 clause if such employee, on the date of
12 the qualifying event, is at least the
13 early retirement age (as defined in
14 section 216(l)(2) of the Social Secu-
15 rity Act) but not yet entitled to bene-
16 fits under title XVIII of the Social Se-
17 curity Act based on age.”.

18 (b) AMENDMENTS TO THE PUBLIC HEALTH SERVICE

19 ACT.—Section 2202(2)(A) of the Public Health Service
20 Act (42 U.S.C. 300bb–2(2)(A)) is amended by inserting
21 after clause (iv) the following:

22 “(v) SPECIAL RULE FOR CERTAIN
23 OLDER WORKERS.—

24 “(I) IN GENERAL.—Notwith-
25 standing any other provision of this

1 subparagraph, in the case of a quali-
2 fying event described in section
3 2203(2) relating to a reduction of
4 hours of an employee described in
5 subclause (II), the date which is 36
6 months after the date of the quali-
7 fying event, except that the period of
8 coverage under this clause shall end
9 on the date on which the employee be-
10 comes entitled to benefits under title
11 XVIII of the Social Security Act
12 based on age.

13 “(II) EMPLOYEE DESCRIBED.—
14 An employee is described in this sub-
15 clause if such employee, on the date of
16 the qualifying event, is at least the
17 early retirement age (as defined in
18 section 216(l)(2) of the Social Secu-
19 rity Act) but not yet entitled to bene-
20 fits under title XVIII of the Social Se-
21 curity Act based on age.”.

22 (c) AMENDMENTS TO THE INTERNAL REVENUE
23 CODE OF 1986.—Section 4980B(f)(2)(B)(i) of the Inter-
24 nal Revenue Code of 1986 is amended by inserting after
25 subclause (V) the following:

1 “(VI) SPECIAL RULE FOR CER-
2 TAIN OLDER WORKERS.—

3 “(aa) IN GENERAL.—Not-
4 withstanding any other provision
5 of this clause, in the case of a
6 qualifying event described in
7 paragraph (3)(B) relating to a
8 reduction of hours of an em-
9 ployee described in item (bb), the
10 date which is 36 months after
11 the date of the qualifying event,
12 except that the period of coverage
13 under this clause shall end on the
14 date on which the employee be-
15 comes entitled to benefits under
16 title XVIII of the Social Security
17 Act based on age.

18 “(bb) EMPLOYEE DE-
19 SCRIBED.—An employee is de-
20 scribed in this subclause if such
21 employee, on the date of the
22 qualifying event, is at least the
23 early retirement age (as defined
24 in section 216(l)(2) of the Social
25 Security Act) but not yet entitled

1 to benefits under title XVIII of
2 the Social Security Act based on
3 age.”.

4 **TITLE II—EMPLOYMENT AND** 5 **TRAINING**

6 **SEC. 201. DEFINITIONS.**

7 Section 101 of the Workforce Investment Act of 1998
8 (29 U.S.C. 2801) is amended—

9 (1) by redesignating paragraphs (17) through
10 (53) as paragraphs (18) through (54), respectively;
11 and

12 (2) by inserting after paragraph (16) the fol-
13 lowing:

14 “(17) **HARD-TO-SERVE POPULATIONS.**—The
15 term ‘hard-to-serve populations’ means populations
16 of individuals who are hard to serve, including dis-
17 placed homemakers, low-income individuals, Native
18 Americans, individuals with disabilities, older indi-
19 viduals, ex-offenders, homeless individuals, individ-
20 uals with limited English proficiency, individuals
21 who do not meet the definition of literacy in section
22 203, individuals facing substantial cultural barriers,
23 migrant and seasonal farmworkers, individuals with-
24 in 2 years of exhausting lifetime eligibility under
25 part A of title IV of the Social Security Act (42

1 U.S.C. 601 et seq.), single parents (including single
 2 pregnant women), and such other groups as the
 3 Governor determines to be hard to serve.”.

4 **SEC. 202. STATEWIDE EMPLOYMENT AND TRAINING ACTIVI-**
 5 **TIES.**

6 Section 134(a)(3)(A) of the Workforce Investment
 7 Act of 1998 (29 U.S.C. 2864(a)(3)(A)) is amended—

8 (1) in clause (vi), by striking “and” at the end;

9 (2) by redesignating clause (vii) as clause (viii);

10 and

11 (3) by inserting after clause (vi) the following:

12 “(vii) developing strategies for effec-
 13 tively serving hard-to-serve populations
 14 and for coordinating programs and services
 15 among one-stop partners; and”.

16 **SEC. 203. LOCAL EMPLOYMENT AND TRAINING ACTIVITIES.**

17 (a) **INTENSIVE SERVICES.**—Section 134(d)(3) of the
 18 Workforce Investment Act of 1998 (29 U.S.C.
 19 2864(d)(3)) is amended by striking subparagraph (A) and
 20 inserting the following:

21 “(A) **IN GENERAL.**—

22 “(i) **ELIGIBILITY.**—Except as pro-
 23 vided in clause (iii), funds allocated to a
 24 local area for adults under paragraph
 25 (2)(A) or (3), as appropriate, of section

1 133(b), and funds allocated to the local
2 area for dislocated workers under section
3 133(b)(2)(B), shall be used to provide in-
4 tensive services to adults and dislocated
5 workers, respectively—

6 “(I) who are unemployed and
7 who, after an interview, evaluation, or
8 assessment, have been determined by
9 a one-stop operator or one-stop part-
10 ner to be—

11 “(aa) unlikely or unable to
12 obtain employment, that leads to
13 self-sufficiency or wages com-
14 parable to or higher than pre-
15 vious employment, through core
16 services described in paragraph
17 (2); and

18 “(bb) in need of intensive
19 services to obtain employment
20 that leads to self-sufficiency or
21 wages comparable to or higher
22 than previous employment; or

23 “(II) who are employed, but who,
24 after an interview, evaluation, or as-
25 sessment, are determined by a one-

1 stop operator or one-stop partner to
2 be in need of intensive services to ob-
3 tain or retain employment that leads
4 to self-sufficiency.

5 “(ii) CONSIDERATION.—For purposes
6 of determining whether an adult or dis-
7 located worker meets the requirements of
8 clause (i)(I)(aa), a one-stop operator or
9 one-stop partner shall consider whether the
10 adult or dislocated worker is a member of
11 a hard-to-serve population.

12 “(iii) SPECIAL RULE.—A new inter-
13 view, evaluation, or assessment of a partic-
14 ipant is not required under clause (i) if the
15 one-stop operator or one-stop partner de-
16 termines that it is appropriate to use a re-
17 cent assessment of the participant con-
18 ducted pursuant to another education or
19 training program.”.

20 (b) TRAINING SERVICES.—Section 134(d)(4) of such
21 Act (29 U.S.C. 2864(d)(4)) is amended by striking sub-
22 paragraph (A) and inserting the following:

23 “(A) IN GENERAL.—

24 “(i) ELIGIBILITY.—Except as pro-
25 vided in clause (iii), funds allocated to a

1 local area for adults under paragraph
2 (2)(A) or (3), as appropriate, of section
3 133(b), and funds allocated to the local
4 area for dislocated workers under section
5 133(b)(2)(B), shall be used to provide
6 training services to adults and dislocated
7 workers, respectively—

8 “(I) who, after an interview, eval-
9 uation, or assessment, and case man-
10 agement, have been determined by a
11 one-stop operator or one-stop partner,
12 as appropriate, to—

13 “(aa) be unlikely or unable
14 to obtain or retain employment,
15 that leads to self-sufficiency or
16 wages comparable to or higher
17 than previous employment,
18 through the intensive services de-
19 scribed in paragraph (3);

20 “(bb) be in need of training
21 services to obtain or retain em-
22 ployment that leads to self-suffi-
23 ciency or wages comparable to or
24 higher than previous employ-
25 ment; and

1 “(cc) have the skills and
2 qualifications to successfully par-
3 ticipate in the selected program
4 of training services;

5 “(II) who select programs of
6 training services that are directly
7 linked to the employment opportuni-
8 ties in the local area or region in-
9 volved or in another area to which the
10 adults or dislocated workers are will-
11 ing to commute or relocate;

12 “(III) who meet the requirements
13 of subparagraph (B); and

14 “(IV) who are determined to be
15 eligible in accordance with the priority
16 system in effect under subparagraph
17 (E).

18 “(ii) CONSIDERATION.—For purposes
19 of determining whether an adult or dis-
20 located worker meets the requirements of
21 clause (i)(I)(aa), a one-stop operator or
22 one-stop partner shall consider whether the
23 adult or dislocated worker is a member of
24 a hard-to-serve population.

1 “(iii) SPECIAL RULE.—A new inter-
2 view, evaluation, or assessment of a partic-
3 ipant is not required under clause (i) if the
4 one-stop operator or one-stop partner de-
5 termines that it is appropriate to use a re-
6 cent assessment of the participant con-
7 ducted pursuant to another education or
8 training program.”.

9 (c) LOCAL EMPLOYMENT AND TRAINING ACTIVI-
10 TIES.—Section 134(e)(1)(A) of such Act (29 U.S.C.
11 2864(e)(1)(A)) is amended—

12 (1) in subparagraph (A), by striking “and” at
13 the end;

14 (2) in subparagraph (B), by striking the period
15 and inserting “; and”; and

16 (3) by adding at the end the following:

17 “(C) customer support to enable members
18 of hard-to-serve populations, including individ-
19 uals with disabilities, to navigate among mul-
20 tiple services and activities for such popu-
21 lations.”.

22 **SEC. 204. PERFORMANCE MEASURES.**

23 (a) STATE PERFORMANCE MEASURES.—Section
24 136(b)(3)(A)(iv)(II) of the Workforce Investment Act of
25 1998 (29 U.S.C. 2871(b)(3)(A)(iv)(II)) is amended—

1 (1) by striking “taking into account” and in-
2 serting “and shall ensure that the levels involved are
3 adjusted, using objective statistical methods, based
4 on”;

5 (2) by inserting “(such as differences in unem-
6 ployment rates and job losses or gains in particular
7 industries)” after “economic conditions”; and

8 (3) by inserting “(such as indicators of poor
9 work history, lack of work experience, lack of edu-
10 cational or occupational skills attainment, dislocation
11 from high-wage and benefit employment, low levels
12 of literacy or English proficiency, disability status,
13 older individual status, homelessness, ex-offender
14 status, and welfare dependency)” after “program”.

15 (b) LOCAL PERFORMANCE MEASURES.—Section
16 136(c)(3) of such Act (29 U.S.C. 2871(c)(3))—

17 (1) by striking “shall take into account” and
18 inserting “shall ensure that the levels involved are
19 adjusted, using objective statistical methods, based
20 on”;

21 (2) by inserting “(characteristics such as unem-
22 ployment rates and job losses or gains in particular
23 industries)” after “economic”; and

24 (3) by inserting “(characteristics such as indi-
25 cators of poor work history, lack of work experience,

1 lack of educational and occupational skills attain-
 2 ment, dislocation from high-wage and benefit em-
 3 ployment, low levels of literacy or English pro-
 4 ficiency, disability status, older individual status,
 5 homelessness, ex-offender status, and welfare de-
 6 pendency)” after “demographic”.

7 (c) WAGE RECORDS AND DOCUMENTED DATA.—Sec-
 8 tion 136(f)(2) of such Act (29 U.S.C. 2871(f)(2)) is
 9 amended—

10 (1) by striking “(2)” and all that follows
 11 through “In” and inserting the following:

12 “(2) WAGE RECORDS AND DOCUMENTED
 13 DATA.—

14 “(A) WAGE RECORDS.—In”; and

15 (2) by adding at the end the following:

16 “(B) DOCUMENTED DATA.—In measuring
 17 the progress of the State with respect to older
 18 individuals on State and local performance
 19 measures relating to earnings, a State may use
 20 documented data other than quarterly wage
 21 records to determine the work schedule of the
 22 older individuals, and may impute full-time
 23 earnings to part-time workers who are older in-
 24 dividuals.”.

1 **SEC. 205. REPORTING.**

2 Section 136(d)(2) of the Workforce Investment Act
3 of 1998 (29 U.S.C. 2871(d)(2)) is amended—

4 (1) in subparagraph (E), by striking “(exclud-
5 ing participants who received only self-service and
6 informational activities)”; and

7 (2) in subparagraph (F)—

8 (A) by striking “(F)” and inserting
9 “(F)(i)”;

10 (B) by striking the period and inserting “;
11 and”; and

12 (C) by adding at the end the following:

13 “(ii) the number of participants in
14 each of the groups described in clause (i)
15 who have received services authorized
16 under this title, in the form of core serv-
17 ices described in section 134(d)(2), inten-
18 sive services described in section 134(d)(3),
19 training services described in section
20 134(d)(4), and followup services, respec-
21 tively;”.

22 **SEC. 206. INCENTIVE GRANTS.**

23 (a) **USE OF FUNDS FOR STATEWIDE EMPLOYMENT**
24 **AND TRAINING ACTIVITIES.**—Section 134(a)(2)(B) of the
25 Workforce Investment Act of 1998 (29 U.S.C.
26 2864(a)(2)(B)) is amended—

1 (1) in clause (v), by striking “and” at the end;

2 (2) in clause (vi), by striking the period and in-
3 serting “; and”; and

4 (3) by adding at the end the following:

5 “(vii) providing incentive grants to
6 local areas, in accordance with section
7 136(j).”.

8 (b) INCENTIVE GRANTS FOR LOCAL AREAS.—Section
9 136 of such Act (29 U.S.C. 2871) is amended by adding
10 at the end the following:

11 “(j) INCENTIVE GRANTS FOR LOCAL AREAS.—

12 “(1) IN GENERAL.—From funds reserved under
13 sections 128(a) and 133(a)(1), the Governor in-
14 volved shall award incentive grants to local areas for
15 performance described in paragraph (2) in carrying
16 out programs under chapters 4 and 5.

17 “(2) BASIS.—The Governor shall award the
18 grants on the basis that the local areas—

19 “(A) have exceeded the performance meas-
20 ures established under subsection (c)(2) relating
21 to indicators described in subsection
22 (b)(3)(A)(iii); or

23 “(B) have—

24 “(i) met the performance measures es-
25 tablished under subsection (c)(2) relating

1 to indicators described in subsection
2 (b)(3)(A)(iii); and

3 “(ii) demonstrated exemplary per-
4 formance in the State in serving hard-to-
5 serve populations.

6 “(3) USE OF FUNDS.—The funds awarded to a
7 local area under this subsection may be used to
8 carry out activities authorized for local areas and
9 such innovative projects or programs that increase
10 coordination and enhance service to program partici-
11 pants, particularly hard-to-serve populations, as may
12 be approved by the Governor.”.

13 (c) INCENTIVE GRANTS FOR STATES.—Section 503
14 of such Act (20 U.S.C. 9273) is amended—

15 (1) by striking subsection (a) and inserting the
16 following:

17 “(a) IN GENERAL.—

18 “(1) TIMELINE.—

19 “(A) PRIOR TO JULY 1, 2010.—Prior to
20 July 1, 2010, the Secretary shall award a grant
21 to each State in accordance with the provisions
22 of this section as this section was in effect on
23 July 1, 2003.

24 “(B) BEGINNING JULY 1, 2010.—Beginning
25 on July 1, 2010, the Secretary shall award in-

1 centive grants to States for performance de-
2 scribed in paragraph (2) in carrying out innova-
3 tive programs consistent with the programs
4 under chapters 4 and 5 of subtitle B of title I,
5 to implement or enhance innovative and coordi-
6 nated programs consistent with the statewide
7 economic, workforce, and educational interests
8 of the State.

9 “(2) BASIS.—The Secretary shall award the
10 grants on the basis that States—

11 “(A) have exceeded the State adjusted lev-
12 els of performance for title I, the adjusted levels
13 of performance for title II, and the levels of
14 performance under the Carl D. Perkins Voca-
15 tional and Technical Education Act of 1998 (20
16 U.S.C. 2301 et seq.); or

17 “(B) have—

18 “(i) met the State adjusted levels of
19 performance for title I, the adjusted levels
20 of performance for title II, and the levels
21 of performance under the Carl D. Perkins
22 Vocational and Technical Education Act of
23 1998 (20 U.S.C. 2301 et seq.); and

1 “(ii) demonstrated exemplary per-
2 formance in serving hard-to-serve popu-
3 lations.

4 “(3) USE OF FUNDS.—The funds awarded to a
5 State under this section may be used to carry out
6 activities authorized for States under chapters 4 and
7 5 of subtitle B of title I, title II, and the Carl D.
8 Perkins Vocational and Technical Education Act of
9 1998 (20 U.S.C. 2301 et seq.), including demonstra-
10 tion projects, and for such innovative projects or
11 programs that increase coordination and enhance
12 service to program participants, particularly hard-to-
13 serve populations.”; and

14 (2) in subsection (b)(2), by striking subpara-
15 graph (C) and inserting the following:

16 “(C) the State meets the requirements of
17 subparagraph (A) or (B) of subsection (a)(2).”.

18 **TITLE III—CLEARINGHOUSE OF**
19 **BEST PRACTICES FOR HIRING**
20 **AND RETAINING OLDER**
21 **WORKERS**

22 **SEC. 301. ESTABLISHMENT.**

23 Not later than 6 months after the date of enactment
24 of this Act, the Secretary of Labor shall—

1 (1) identify best practices for hiring and retain-
2 ing older workers in the private and public sectors;
3 and

4 (2) make such information publicly available
5 through the Internet.

6 **SEC. 302. ANNUAL UPDATES.**

7 The Secretary of Labor shall update the practices
8 identified under section 301(1) and make such informa-
9 tion publicly available as provided under section 301(2)
10 on an annual basis.

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