

HOUSE BILL REPORT

HB 2427

As Reported by House Committee On:
Commerce & Labor
Appropriations

Title: An act relating to occupational safety and health impacts grants.

Brief Description: Establishing occupational safety and health impact grants.

Sponsors: Representatives Conway, O'Brien, Cody, Dickerson, Ogden, Cooper, Berkey, Reardon, Veloria, Hurst, Hunt, Kirby, Upthegrove, Romero, Kagi, McIntire, Haigh, Wood, Kenney, Simpson and Sullivan; by request of Department of Labor & Industries.

Brief History:

Committee Activity:

Commerce & Labor: 1/24/02, 2/6/02 [DPS];
Appropriations: 2/9/02, 2/11/02 [DP2S(w/o sub CL)].

Brief Summary of Second Substitute Bill

- Establishes an occupational safety and health impact grant program.
- Authorizes grants of up to \$250,000 for education and training, technical innovation, and application of hazard controls.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Clements, Ranking Minority Member; Kenney and Lysen.

Minority Report: Do not pass. Signed by 2 members: Representatives Chandler and McMorris.

Staff: Jill Reinmuth (786-7134); Chris Cordes (786-7103).

Background:

In 1999 Engrossed House Bill 2232 passed the Legislature and was signed by the Governor. The bill established a safety and health impact grant program administered by the Department of Labor and Industries. The bill, however, was conditioned on being referenced by bill number in the biennial budget. The biennial budget included \$5 million from the medical aid fund for the grant program, but did not specifically reference the bill number. Thus, the bill was null and void. Since 1999 bills reenacting EHB 2232 have not passed.

Also in 1999, with the funds appropriated to the department in the 1999-2001 biennial budget, the department began administering a grant program in a manner consistent with EHB 2232. A Safety and Health Impact Grant Review Committee was established. Grant applications were requested, reviewed, and recommended for funding. A total of \$4.3 million was awarded to support 30 projects. When the biennium ended, the program also ended. The 2001-2003 biennial budget did not include funding for the grant program.

Summary of Substitute Bill:

An occupational safety and health impact grant program is established. The program is administered by the Department of Labor and Industries. It is funded from medical aid fund reserves that are in excess of actuarial needs and that are appropriated to the department in a budget proviso or appropriations clause.

Purposes. The purpose of the grant program is to prevent injuries and illnesses, protect lives, and provide workplace safety education to employers and employees, especially those in small businesses.

Uses. The department may award grants of up to \$250,000 for education and training, technical innovation, or application of hazard controls. Grant recipients may not use grant funds to support or develop specific legislative or regulatory initiatives, or to fund on-going business operations. Grant recipients also may not charge more than 10 percent of the grant award for administrative expenses.

Grant Recipients. The department may award grants to: trade associations, business associations, employers, employee organizations, and labor unions or groups of employees. The department must make significant efforts to ensure that not less than 20 percent of available funds are used to assist and benefit employers and employees in small businesses (those with fewer than 50 employees). The department may not award grants to educational institutions and self-insured employers, unless a partnership is formed with an eligible grant recipient and the product of the grant will benefit state fund employers and employees.

Grant Review Committee. A nine member Safety and Health Impact Grant Review

Committee is created to prepare requests for proposals, develop application procedures and approval criteria, and review and process grant applications. The membership is appointed by the director and includes four employee representatives, four employer representatives, and one non-voting department representative.

Application and Approval. The department must award grants using a competitive process. The committee identifies, by a two-thirds vote, grant applications that merit funding. The director approves those grants unless he or she has a compelling and substantive reason to reject the application. When an application is rejected, certain procedures for reconsideration and review apply.

Revocation and Suspension. The director may suspend or revoke a grant because the recipient is not complying with grant criteria or procedures if either the grant review committee recommends such action by a two-thirds vote, or the director has compelling and substantive reasons. If the director suspends a grant without advice of the grant review committee, the suspension recommendation must be presented to the committee for consideration.

Grant Evaluation. Grants must include methods by which to measure progress toward completion of grant activities and at least one measurable outcome related to injury and illness reduction, hazard reduction, or safety and health awareness. Grant evaluations must address positive and negative impacts and costs.

Program Evaluation. The department and the committee must annually report on the grant program to the WISHA and workers' compensation advisory committees, and make the report available to the Legislature. The Workers' Compensation Advisory Committee will make a biennial program budget recommendation to the director based on a recommendation by the WISHA Advisory Committee. The director and the WISHA Advisory Committee will review the grant program and issue a report on the program to the Legislature by December 31, 2007.

Other. The department may not use information in grant applications or developed through grant activities to initiate rule-making, to initiate department activity at a worksite, or to establish the existence of a recognized hazard. Information in a grant application or resulting from grant activities is inadmissible in a civil action in court proceedings or administrative proceedings unless the proceeding is related to enforcement of grant program or related to fraud in the grant process. Materials developed with a grant are in the public domain and must be provided to the department at no charge.

Sunset. The grant program terminates July 1, 2008.

Substitute Bill Compared to Original Bill:

The substitute makes the following changes to the original bill: (1) prohibits the department from initiating rule-making using information in a grant application or resulting from grant activities; (2) makes information in a grant application or resulting from grant activities inadmissible in a civil action in court proceedings or administrative proceedings unless the proceeding is related to enforcement of grant programs or related to fraud in the grant process; (3) adds, for purposes of making grants intended to assist employers and employees in small businesses and of appointing a small employer representative to the safety and health impact grant review committee, that "small business" and "small employer" mean those that employ fewer than 50 employees; (4) adds that department staff will provide administrative support to the Safety and Health Impact Grant Review Committee in an objective and impartial manner; and (5) clarifies that the funding for the program must be specifically referenced in a budget proviso or in an appropriation clause in a bill.

Appropriation: \$5 million from medical aid account funds in excess of actuarial needs.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The original grant program was enthusiastically received. One hundred and ninety-six applications were submitted and 30 grants were awarded. Most were for education and training, and some were for hazard reduction. Projects were innovative and cost-effective. Based on its experience with the original program, the grant committee planned to make changes to increase accountability and small business participation.

The proposed grant program requires greater accountability. It limits individual grant awards as well as administrative expenses, and requires that grant progress and outcomes be measured. The proposed grant program also focuses more on small business. It provides that a certain percentage of grant funds be used to benefit employers and employees in small businesses, and that at least one member of the grant committee must represent small business.

The Governor's proposed supplemental budget contains a \$5 million appropriation from the medical aid fund for the proposed program. The proposed program will kick start workplace safety and health programs, and will help reduce workplace injuries and illnesses.

Both the accident fund and the medical aid fund had extraordinary gains in recent years. Approximately \$400 million in dividends were paid to employers who paid into those funds. The proposed program is a way to benefit employees who also paid into those

funds.

Testimony Against: The grant program is bad public policy. Taxes collected to pay for the treatment of injured workers should be used for that purpose. If there are excess funds, they should be returned to taxpayers, used to keep tax rates low, or used to improve the workers' compensation program. One alternative would be to use these funds for the Department of Labor and Industries' Centers for Health Excellence.

The grant program must require accountability from grant recipients. The amount available for the grant program must be reviewed each year, and must not be part of the Department's carry-forward budget. The results of grants must not be used to establish new rules or to impose penalties or other sanctions, and must not be admissible in civil actions. The grant program must not be used to influence the Department's legislative or regulatory initiatives.

Testified: (In support) Chuck Bailey, Build It Smart; Steve Cant, Department of Labor and Industries; Randy Loomans, Washington State Labor Council; Sharon Ness, United Food & Commercial Workers; Melody Rogers; Michael Silverstein, Department of Labor and Industries; Rick Slunaker, Associated General Contractors; Jamila Thomas-Roberts, Governor's Office; and Terry Tilton, Washington State Building & Construction Trades Council.

(Opposed) Amber Balch, Association of Washington Business; Mark Johnson, National Federation of Independent Business; Gary Smith, Independent Business Association; and Robyn Meenach, Washington State Farm Bureau.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Labor. Signed by 15 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Clements, Cody, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, McIntire, Ruderman, Schual-Berke and Tokuda.

Minority Report: Do not pass. Signed by 10 members: Representatives Sehlin, Ranking Minority Member; Alexander, Boldt, Buck, Cox, Lisk, Mastin, Pearson, Pflug and Talcott.

Staff: Linda Brooks (786-7153).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:

The \$5 million appropriation for the grant program is removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The Medical Aid Account is paid for by both workers and employers. There is no way to refund the dollars paid by the workers. This grant program was proposed by business and labor members of the Workers' Compensation Advisory Committee as a way to give back money to the workers who have been paying into the Medical Aid Account, comparable to the dividends that Labor & Industries has been returning to businesses because of the success of the stock market. We have been underfunding the Medical Aid Account for several years, because we have wanted to bring down the excess reserves. Funds for the grant program would come from an excess in the account that exceeds actuarially-determined reserves. We believe this grant program belongs under WISHA and not in workers' compensation. The focus of the grant program is on preventing illnesses or injuries.

Testimony Against: We're opposed to this bill. This bill uses surplus funds in one program to create a new program. There is a statute that says what to do when there are surplus funds. We asked our members, would you rather have the surplus be used to fund a new program or to lower your premiums, and unanimously they said lower premiums. We strongly oppose using the fund for anything other than paying benefits for injured workers. This grant program wouldn't help small businesses. Small businesses pay 80 percent of premiums into the state fund, but small businesses will receive only 20 percent of the grants.

Testified: (In favor) Dan Sexton, Washington State Association of Plumbers and Pipefitters; Jeff Johnson, Washington State Labor Council; and Suzanne Mager, Department of Labor and Industries.

(In favor with amendments) Amber Balch, Association of Washington Business.

(Opposed) Gary Smith and Mark Johnson, National Independent Business Association. Dan Fazio, Washington State Farm Bureau