

# SENATE BILL REPORT

## ESB 5161

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As Passed Senate, February 18, 2003

**Title:** An act relating to ergonomics rules.

**Brief Description:** Establishing an ergonomics resource center.

**Sponsors:** Senators Hewitt, Rasmussen, Honeyford, T. Sheldon, Hale, Hargrove, Horn, Haugen, Mulliken, Oke, Sheahan, Roach, McCaslin, Benton, Brandland, Deccio, Esser, Johnson, Parlette, Rossi and Schmidt.

**Brief History:**

**Committee Activity:** Commerce & Trade: 1/23/03, 1/29/03 [DP, DNP].

Passed Senate: 2/18/03, 30-19.

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### SENATE COMMITTEE ON COMMERCE & TRADE

**Majority Report:** Do pass.

Signed by Senators Honeyford, Chair; Hewitt, Vice Chair; and Mulliken.

**Minority Report:** Do not pass.

Signed by Senators Franklin and Keiser.

**Staff:** John Dziedzic (786-7784)

**Background:** Ergonomics is the study of "designing jobs, selecting tools and modifying work methods to better fit workers' capabilities and prevent injuries." It is particularly concerned with work-related musculoskeletal disorders (WMSD), such as carpal tunnel, tendinitis, and back injuries.

The Department of Labor and Industries (L&I) began developing rules relating to ergonomics in October 1998 and released final rules in May 2000. The rules (a) focus on "caution zone jobs" that involve awkward positions, high hand force, repeated impact or repetitive motions; and (b) require employers to "find and fix ergonomic hazards in the workplace."

These rules apply to all industries and were originally to be phased-in over five years, starting in July 2002 with larger employers (those with 50 or more FTE) in industries deemed to have the highest risk of WMSD. The Senate passed a bill (ESB 5882) in 2001 that would have delayed the rules' implementation schedule for two years, but the House did not take action on the bill. In March 2002 Governor Locke directed L&I to delay imposition of citations and penalties for two years, pushing back the start of implementation to July 2004.

In July 2002 a Thurston County Superior Court judge rejected arguments that L&I exceeded its authority, acted arbitrarily and capriciously, and failed to adhere to rule-making procedures in adopting the rule. All parties to that action have agreed to petition directly to the Washington Supreme Court for discretionary review of the decision.

At the federal level, the Occupational Safety and Health Administration (OSHA) published a final ergonomics rule in November 2000. In March 2001 Congress invoked the Congressional Review of Agency Rulemaking Act to rescind the rule and prohibit OSHA from imposing "substantially the same" requirements.

In April 2002 OSHA announced it was commencing an "ergonomics action plan" involving "industry and task-specific guidelines." Since then, OSHA has (a) proposed voluntary guidelines for the nursing home industry; (b) identified retail grocery stores and poultry processing as the focus of the next two sets of industry-specific guidelines; and (c) supported the North Carolina Department of Labor's effort to produce voluntary guidelines for the furniture manufacturing industry.

Washington and California are the only states that have adopted ergonomic regulations. California did so in 1996, and the rule went into effect in 1999. In August 2002 Governor Gray Davis vetoed a bill that would have required the California Occupational Safety and Health Standards Board to revise those regulations by July 1, 2004.

**Summary of Bill:** The ergonomic rules adopted by L&I on May 26, 2000 remain in place only as voluntary guidelines, and L&I is directed to not adopt any other rules substantially the same, unless required by Congress or OSHA. L&I must (1) provide expertise and assistance to employers through an ergonomic resource center; (2) create an ergonomics clearinghouse, including an internet-based "ideas bank;" (3) develop an assistance guide for small businesses; (4) appoint an ergonomics ombudsman to assist employers and employees with problems implementing the rules; and (5) establish a two-year demonstration project that provides assistance awards of up to \$5000 to wholly or partially offset costs to small businesses that make workplace improvements applying the ergonomic rules.

**Appropriation:** None.

**Fiscal Note:** Requested on January 21, 2003.

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

**Testimony For:** L&I doesn't have statutory authority for these rules, and the cost/benefit analysis used by L&I is flawed. The rules will force jobs and businesses to leave the state. Employers should not be required to comply with untested and unique rules, especially when there is disagreement among experts in the subject and there is the possibility of inconsistent application.

**Testimony Against:** The rules advance the goal of preventing injury, create a safer workplace, increase productivity, and will have a positive effect on worker compensation premium rates. The rules provide uniform standards, which have been reviewed by a "Blue Ribbon Panel," and won't cost as much as opponents' studies estimate.

**Testified:** PRO: Amber Balch, AWB; Tim O'Connell, Stoel Rives, LLP; Ed Danzer, Danzco; John Cedergreen, WA Food Processors Council; Stan Bigos; Curt Anderson, NFIB-ACCA; George Madsen, Madsen Roofing, Inc.; Dick Mettler, NW Wall & Ceiling Contractors Assn. CON: Dr. Michael Silverstein, L&I; Randy Loomans, WSLC; Owen Linch, Teamsters; Blaine Sherfinski, UCFW Local 367; Greg Devereux, WFSE; Linda

Lanham, IAM; Greg Fisher, UFCW Local 1105; Ellie Menzies, SEIU; Jerrie Wood, CWA State Council.