

# SENATE BILL REPORT

## SB 5842

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As Reported By Senate Committee On:  
Labor, Commerce, Research & Development, March 1, 2005  
Ways & Means, March 7, 2005

**Title:** An act relating to substantially improving worker safety, accident prevention, and worker outcomes through the department of labor and industries' retrospective rating program.

**Brief Description:** Using the retrospective rating program to improve worker safety.

**Sponsors:** Senators Doumit, Kohl-Welles, Rasmussen, Keiser, Kline, Prentice, McAuliffe, Spanel, Franklin and Jacobsen.

**Brief History:**

**Committee Activity:** Labor, Commerce, Research & Development: 2/24/05, 3/1/05 [DPS-WM, DNP].

Ways & Means: 3/7/05 [w/oRec, DNP].

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### SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 5842 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Brown, Keiser and Prentice.

**Minority Report:** Do not pass.

Signed by Senators Parlette, Ranking Minority Member; Hewitt and Honeyford.

**Staff:** Jennifer Strus (786-7316)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That it be referred without recommendation.

Signed by Senators Prentice, Chair; Doumit, Vice Chair; Fraser, Vice Chair; Fairley, Kohl-Welles, Pridemore, Rasmussen, Regala and Rockefeller.

**Minority Report:** Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Hewitt, Parlette, Pflug, Roach and Schoesler.

**Staff:** Paula Faas (786-7449)

**Background:** In the late 1970s and the early 1980s, the Department of Labor and Industries (L&I) developed and implemented a retrospective rating plan for groups of employers. This plan allowed groups of employers to assume a portion of industrial insurance risk. A group could agree that, following a policy period, premiums would be adjusted based on the group's

actual losses during the policy period. The group would receive a refund if injury costs decreased, or an assessment if injury costs increased.

In 1980, as part of the development of the retrospective rating plan, the Legislature enacted Senate Bill 3169 (Laws of 1980, Chapter 129). This legislation authorized L&I to insure employers as a group under certain conditions, including the following: (1) the occupations or industries of the employers in a retrospective rating group must be substantially similar; and (2) the formation of a retrospective rating group must substantially improve accident prevention and claims management for employers in the group.

This legislation also authorized L&I to consider an employer group as a single entity for purposes of dividends or premium discounts.

In 1999 L&I requested and the Legislature enacted Senate Bill 6048 (Laws of 1999, Chapter 7). This legislation required L&I to offer a retrospective rating plan for groups of employers. This legislation also required the following:

- the sponsor of a retrospective rating group must exist for a purpose independent of insurance purposes;
- a group must be composed of employers who are substantially similar, considering their employees' services or activities;
- the group must seek to substantially improve workplace safety, injury prevention, and claims management for the group's members;
- the sponsor must select one of twelve broad industry or business categories for the group; and
- L&I must allow all risk classifications reasonably related to that business or industry category into the group.

**Summary of Substitute Bill:** The following funds must be used to administer a retrospective rating group's (group) program or be retained as reserves to meet any future assessments: (1) enrollment fees and other payments made by the group's members to participate only in the group; (2) incentive payments made by L&I to the group's sponsor; and (3) interest earned on reserves maintained by the group's sponsor to meet future assessments.

The funds used to administer the retrospective rating group's programs may be used only to pay for expenses directly related to substantially improving worker safety, accident prevention, and worker outcomes. These expenses may include safety education, risk management, claims monitoring, and return-to-work program-related assistance, as well as legal and investment-related expenses. Any funds not used for these purposes must be returned to the group's members.

If a retrospective rating group is disqualified from or does not re-enroll in the plan, reserves maintained by the group's sponsor must be used to administer the group's program or pay the group's final obligations. Any reserves not used for these purposes must be returned to the group's members.

Each group's sponsor must report annually to L&I on funds used to administer the group's programs and retained as reserves to meet future assessments, and on expenses directly related to substantially improving worker safety, accident prevention, and worker outcomes. L&I must periodically inspect and review records of sponsors. If L&I has reasonable cause to

believe that a sponsor has not complied with the provisions of this bill, the State Auditor must conduct an audit to determine whether the sponsor is in compliance.

L&I may consider a group as a single employing entity for purposes of incentive payments to recognize substantial improvements in worker safety, accident prevention, and worker outcomes (instead of dividends or premium discounts).

Employers that have been members of a group since July 25, 1999 would be able to continue in that group if they are substantially similar considering the services or activities performed by the employees of those employers. If the employer cannot meet this test, then the employer must move to another group for which it could meet the substantially similar test by January 1, 2007.

An employer who joins a group after the effective date of this act must be placed in a group in which the sponsor has chosen a single, broad industry or business category for the group. If the employer does not fall within the industry or business category chosen by the group, L&I may approve the addition of an employer to a group that selected the most similarly related industry or business category.

**Substitute Bill Compared to Original Bill:** The original bill was not considered.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** When the bill that created the retro program was first passed in the early 1980's, the intent was not that the individual rate was reduced but that the employers received money back as an incentive to continue to improve worker safety. Some groups still do this but many have drifted far afield and are using the funds returned for things way beyond what the program was created for. Only the largest retro groups receive a refund; for smaller and independent retro groups this is not true. Larger groups receive more money in refunds than smaller or independent retro groups even if those smaller or independent groups outperform the larger groups. The retro program can be windfall for the group program but essentially does little for the worker. Directing incentive payments to worker safety means not just the employer receives something positive. Only funds directly related to the retro program administration should be kept by the retro program. This bill takes the retro program back to what it was originally intended to do.

**Testimony Against:** Retro programs are performance driven. BIAW has really helped its retro members improve workplace safety. The government should not interfere with this relationship. There are no BIAW retro members in favor of this bill. BIAW has received 1400 letters from BIAW members protesting this bill. BIAW is incented to produce the highest refund possible and they only receive a refund if they have a good safety program and good safety claims management for their members. When this program was started in 1980, there was nothing in the legislation about safety. Retro does not work unless the group/employer is committed to safety. Concerned that the term "substantially" in the bill - subject to legal

argument and interpretation. The money returned to the retro group is private money and it is not the legislature's business how that money is spent. The retro program pushes a lot of money back into the economy. Retro programs outperform other employers on safety. The legislature has used workers' compensation funds for other purposes over the years - should look at this rather than how a private group spends its money.

**Who Testified:** PRO: Senator Doumit, prime sponsor; Dick King, IBEW; Mitch Seaman, Washington State Building Trades Council; Owen Linch, Teamsters; Robby Stern, Washington State Labor Council; Dave Johnson, Washington State Building Trades; Elie Menzies, SEIU; Julie Peterson, Washington Association of Housing & Services for the Aging. OTHER: Bob Malooly, Department of Labor & Industries.

CON: Tom Kwieciak, Building Industry Association of Washington; Mark Shaffer, Mark's Drywall; Rick Slunaker, Associated General Contractors; Dan Fazio, Washington State Farm Bureau; Amber Carter, AWB; Bill Pickell, Washington Contract Logger's Association; Don Apsher, Apsher Landscaping.