

HOUSE BILL REPORT

SSB 5053

As Passed House - Amended:

April 4, 2007

Title: An act relating to creating the office of the ombudsman for workers of industrial insurance self-insured employers.

Brief Description: Creating the office of the ombudsman for workers of industrial insurance self-insured employers.

Sponsors: By Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Keiser, Kohl-Welles and Kline).

Brief History:

Committee Activity:

Commerce & Labor: 3/22/07, 3/30/07 [DPA].

Floor Activity:

Passed House - Amended: 4/4/07, 59-35.

Brief Summary of Substitute Bill (As Amended by House)

- Creates the Office of the Ombudsman for workers of industrial insurance self-insured employers.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member and Chandler, Assistant Ranking Minority Member.

Staff: Sarah Beznoska (786-7109).

Background:

Industrial insurance is a no-fault state workers' compensation program that provides medical and partial wage replacement benefits to cover workers who are injured on the job or who

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develop an occupational disease. Employers must insure with the state fund operated by the Department of Labor and Industries (Department) or, if qualified, may self-insure.

Self-insurers must provide their injured workers with the same benefits that are provided to injured workers in state fund claims, including medical and partial wage replacement benefits, permanent partial and total disability benefits, and death benefits. Self-insurers manage some aspects of their injured worker claims including:

- paying time-loss benefits directly to their injured workers and reporting these payments to the Department;
- scheduling medical appointments required by the employer, referring injured workers to vocational rehabilitation counselors, and closing certain undisputed claims; and
- determining and paying permanent partial disability benefits if the claimant has returned to work with the employer. In other claims, the Department determines permanent disability benefits and closes the claim.

For other aspects of self-insured claims, the Department must make determinations and issue orders, such as orders allowing or denying a claim. The Department also pays pension benefits to self-insured injured workers, and the self-insurer pays the pension reserve for these costs. The Director of the Department (Director) has authority to intervene on his or her own initiative in disputes and enter orders to promptly determine the matter and protect the rights of all parties.

Self-insurers pay certain assessments to the Department to cover the Department's administrative costs of regulating self-insurance and for an insolvency trust fund that covers the costs of self-insured employers who become unable to meet their workers' compensation obligations.

Self-insurers are subject to decertification or corrective action for failing to meet financial requirements or for various prohibited actions against employees. If a self-insurer unreasonably delays or refuses to pay benefits when due, the Director may order the self-insurer to pay an additional penalty of \$500 or 25 percent of the amount due, which is paid to the worker with the benefits that were due.

Summary of Amended Bill:

The Office of the Ombudsman for workers of industrial insurance self-insured employers is created. The Office of the Ombudsman may be openly and publicly contracted by the Governor in accordance with state law governing personal services contracts, but must not be physically housed within the Industrial Insurance division of the Department. During the first two years after creation, the staffing level for the Office of the Ombudsman must not be more than four persons, including the Ombudsman and any administrative staff. After the first two years, the staffing levels must be determined based on workload and whether additional locations are needed.

The Ombudsman is appointed by the Governor for a term of six years and reports to the Director of the Department. Any Ombudsman must have training or experience, or both, in the following:

- Washington industrial insurance including self-insurance programs;
- the Washington legal system; and
- dispute or problem resolution techniques, including investigation, mediation, or negotiation.

The Office of the Ombudsman must:

- act as an advocate for injured workers of self-insured employers;
- provide industrial insurance information to workers of self-insured employers;
- identify, investigate, and facilitate resolution of industrial insurance complaints;
- maintain a statewide toll-free telephone number to receive complaints and inquiries; and
- refer complaints to the Department.

The Office of the Ombudsman must develop referral procedures for complaints by workers of self-insured employers. The Department is required to act as quickly as possible on any complaint referred to the Department and to forward the Ombudsman a summary of the results of the investigation and action proposed or taken.

The Ombudsman must integrate into existing posters and brochures information explaining the Ombudsman program. The posters and brochures must contain the Ombudsman's toll-free telephone number. Self-insured employers are required to place a poster in an area where all employees have access to it. Self-insured employers also must provide a brochure to all injured employees at the time the employer is notified of an injury.

The Ombudsman is not liable for the good-faith performance of his or her responsibilities, and employees who provide information to or communicate with the Ombudsman may not be subject to discriminatory, disciplinary, or retaliatory action by their employers. The Ombudsman's records and files relating to any complaint or investigation made and the identities of complainants, witnesses, or injured workers are confidential unless disclosure is authorized by the complainant, the injured worker, or the injured worker's guardian or legal representative.

Start-up funding is provided by a one-time assessment on all self-insurers as determined by the Department to meet the start-up costs. An annual administrative assessment on self-insured employers is established to provide ongoing funding. The amount of the annual assessment will be determined by the Director and must be proportionately based on the number of claims for each self-insured employer during the past year.

The Ombudsman must report by October 1 of each year to the Governor on the following:

- the issues addressed by the Ombudsman during the past year;
- an accounting of the Ombudsman's monitoring activities; and

- deficiencies in the industrial insurance system related to self-insurers.

The first report is due on or before October 1, 2008.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) For two-and-a-half years, we have negotiated to expand authority of self-insured employers. As part of that, there was discussion about an ombudsman program for workers of self-insurers. In 1998, the Joint Legislative Audit and Review Committee audit recommended an ombudsman program be established for self-insurers before additional authority be given to them.

This bill is substantially different from the Project Help model. First, the bill establishes staffing levels of initially four positions and then levels are driven by workload. Second, it is a Governor appointment for a six-year term, which gives stability to the office. Injured workers would have the Ombudsman as an advocate with respect to investigating and referring complaints to the Department, and the Department would have to adjudicate the complaint. Lastly, there is an annual report to the Governor that must include information on projects that have been undertaken and deficiencies in current law.

The experience of Hanford workers exposed to deadly beryllium is a good example of why this Legislation is needed. A two-year independent review documented a complete lack of responsiveness by the self-insurance contractor at Hanford. Individuals were required to undergo multiple tests and independent medical examinations. Another Department of Energy program recognized these people as sick from chronic beryllium disease, but the self-insurance contractor still denied the claim. Workers at Hanford need an Ombudsman to step in when these types of issues arise.

(Opposed) The concept of an Ombudsman is not opposed. However, there were long and productive discussions about the issue of the authority of self-insurers. This should be part of that set of discussions. The concept of an Ombudsman is premature. Many employees that work for self-insurers do use Project Help even though self-insurers do not contribute to Project Help. So there is an opportunity for workers of self-insurers to get assistance. These workers also contact legislators about issues and for help in resolving those questions when they arise. The Department also serves in an ombudsman role in many of these cases.

If this bill sought to enhance Project Help, there might be more support for the concept.

Persons Testifying: (In support) Owen Lynch, Joint Council of Teamsters; and Bob Cooper, Heart of America Northwest.

(Opposed) Kathleen Collins, Washington Self Insurers Association.

Persons Signed In To Testify But Not Testifying: None.