

SENATE BILL REPORT

SB 5053

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 26, 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: Senators Keiser, Kohl-Welles and Kline.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 1/25/07, 2/26/07 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5053 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senator Holmquist.

Minority Report: That it be referred without recommendation.

Signed by Senator Clements, Ranking Minority Member.

Staff: Kathleen Buchli (786-7488)

Background: Under the Department of Labor and Industries' (L&I) workers' compensation insurance program, employees are compensated for approved medical, hospital, and related services due to workplace injuries. Most employers must provide coverage for their employees by either paying into the Washington State Fund or by qualifying as a self-insurer.

Self-insured employers 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-insured employers manage most aspects of their injured worker claims and are required to report various claims actions to L&I. It is a long-term obligation by the self-insured employer to be responsible for the payment of benefits during the time a claim is open. L&I oversees

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the provision by the self-insured employer of benefits to ensure compliance with its rules and regulations and reviews the financial strength of the self-insurer to ensure that workers' compensation obligations can be met.

Summary of Bill: The office for the ombudsman for workers of industrial insurance self-insured employers is created and may not be physically housed within the industrial insurance division of L&I. The ombudsman is appointed by the Governor and reports to the director of L&I. The person appointed ombudsman must: act as an advocate for injured workers of self-insured employers; provide industrial insurance information to workers of self-insured employers; receive complaints and inquiries; and refer complaints to L&I.

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 are not subject to public disclosure.

Start-up funding for the ombudsman's office is provided by a one-time assessment on all self-insurers as determined by L&I to meet the start-up costs. An annual administrative assessment on self-insurers is established to provide ongoing funding of the ombudsman's office. The amount of the annual assessment will be determined by the director of L&I.

The ombudsman must report by October 1 of each year to the Governor on 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.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Labor, Commerce, Research & Development): Technical changes are made such as changing the phrase "1 800" number to "toll-free telephone" number and ensuring the uniform use of the phrase "complainant or injured workers." The reporting requirement is changed to begin in October 2008.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The purpose of the ombudsman program is to avoid disputes in the self-insurers section of the workers' compensation system. Ombudsman approaches avoid legal costs and lengthy disputes in cases where there is a disagreement. A mediated, ombudsman approach resolves complaints earlier. This is similar to Project Help which has been very successful in getting disputed claims resolved without resorting to lengthy and costly legal proceedings. The language closely parallels language that has been in bargaining between a labor coalition and the self-insurers association. The Joint Legislative Audit and Review Committee performance audit of 1998 recommended that: an ombudsman program be put in place, a compliance unit be put in place, and then oversight of self-insured employers can be decreased.

CON: There are concerns over the context of this approach. Clear communication is encouraged with workers and advocates toward resolving issues to avoid litigation. Project Help is positive for some self-insured employees. Further negotiation must occur before the ombudsman program is created. Getting additional authority would be an important part for the employers. L&I does do a second look at the decisions made by the self-insurers and can assist employees of self-insurers.

Persons Testifying: PRO: Senator Karen Keiser, prime sponsor; Owen Linch, Teamsters; and Robby Stern, Washington State Labor Council.

CON: Kathleen Collins, Washington Self Insurers Association.