

SENATE BILL REPORT

SB 5920

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 22, 2007

Title: An act relating to a pilot program for vocational rehabilitation services.

Brief Description: Establishing a pilot program for vocational rehabilitation services.

Sponsors: Senators Kohl-Welles, Keiser, Shin and Rasmussen; by request of Governor Gregoire.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 2/15/07, 2/22/07 [DPS-WM, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5920 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Minority Report: Do not pass.

Signed by Senators Clements, Ranking Minority Member and Holmquist.

Staff: Jennifer Strus (786-7316)

Background: One of the primary purposes of Washington's Industrial Insurance Act (Act) is to assist the worker to become employable at gainful employment. The Department of Labor and Industries (L&I) pays, or directs self-insurers to pay, the costs of vocational rehabilitation services when these services are necessary and likely to enable the injured worker to become employable at gainful employment. Costs for vocational rehabilitation are chargeable to a state fund employer's cost experience. Under L&I rules, an injured worker is employable if the worker has skills and training necessary in the labor market to be capable of performing and obtaining gainful employment on a reasonably continuous basis, considering age, education, experience, and preexisting limitations or limitations due to a workplace injury.

Under L&I rules, an ability-to-work assessment is used to determine if an injured worker should receive vocational rehabilitation services. An ability-to-work assessment report must recommend one of the following: (1) the injured worker is employable at gainful employment; (2) vocational rehabilitation services are necessary and likely to enable the

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injured worker to become employable at gainful employment; or (3) the injured worker is not likely to benefit from vocational services.

Costs for vocational services include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses. The cap for these costs is \$4,000 in any 52-week period. A worker may also receive transportation costs. L&I may extend the time frame for an additional 52 weeks. If a worker is required to reside away from his or her residence while undergoing vocational rehabilitation, the reasonable costs of board and lodging must also be paid. A worker undergoing vocational rehabilitation is entitled to continuing time-loss compensation while actively and successfully undergoing vocational rehabilitation.

Worksource is a joint venture to address employment needs in the state. Worksource partners include state and local government agencies as well as local community-based organizations that provide a wide range of employment and training-related services. Worksource Centers provide information, technology, and career services for job seekers.

Summary of Bill: Vocational Rehabilitation Project: A vocational rehabilitation pilot project is established within L&I starting January 1, 2008, and ending June 30, 2013. This pilot project is intended to allow opportunities for eligible workers to participate in meaningful retraining in high demand occupations, improve successful return to work, achieve positive outcomes for workers, and reduce the incidence of repeat vocational services. L&I is to establish a temporary vocational cost fund to minimize any unintended financial impacts to employers. L&I is to initially fund this account with a \$20 million transfer on July 1, 2008, from the Medical Aid Account.

In implementing the pilot project, L&I is to establish a vocational initiative project in partnership with Worksource. L&I is to place vocational professional full-time employees at pilot Worksource sites, refer some workers to these vocational professionals, and work with employers in Worksource pilot areas to market the benefits of on-the-job training programs and with community colleges to reserve slots in high demand programs. As part of this project, L&I is also to develop and maintain a register of state fund and self-insured workers who have been retrained or have selected any of the vocational options.

Vocational Rehabilitation Subcommittee: To further the project, L&I is to create a vocational rehabilitation subcommittee comprised of members chosen by the L&I Director to provide the business and labor partnership needed to maintain focus on the intent of the pilot project. The subcommittee is to report to the Director at least annually and recommend any changes needed to the pilot program.

Vocational Referral, Plan development and Approval: When vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she is to be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. On the date L&I refers the case to a vocational professional to develop a vocational plan, L&I must also inform the employer in writing of the employer's right to proffer a valid return to work offer. If the employer fails to proffer the offer within 15 calendar days of the day the worker starts vocational plan development, the worker may decline any later offer and choose to remain in vocational plan development.

All vocational plans must contain an accountability agreement signed by the worker detailing expectations regarding progress, attendance, and other factors influencing successful participation in the plan. If the worker does not abide by the agreement, L&I could suspend vocational rehabilitation benefits.

The completed vocational plan for a worker must be submitted to L&I within 90 days of the day the worker starts the vocational plan development.

Costs for the plan include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on the job training, the cost of furnishing tools, and other equipment necessary for self-employment or reemployment, and other necessary expenses up to \$12,000. L&I is to adjust this amount each year based on the average percentage change in tuition for the next fall quarter at all Washington community colleges.

The vocational plan is not to exceed two years from the date the plan is implemented. The worker is to receive temporary total disability time loss payments during the time he or she is actively and successfully participating in a vocational plan.

Once L&I approves the vocational plan, the worker has 15 calendar days to choose one of two options: (1) L&I implements and the worker participates in the vocational plan; or (2) the worker declines the vocational plans and opts to take a payment equal to six months of temporary total disability paid in biweekly payments. L&I may pay the worker this amount in a lump sum. The tuition benefits and or educational costs described in the plan are available to the worker for five years after the date the worker selects an option. L&I can order that vocational services be provided to a worker without regard to the worker's prior option selection previously expended in the claim.

Vocational Plan Interruption: When vocational plan interruption is beyond the worker's control the worker may recommence the plan. A vocational plan interruption is beyond the control of the worker when it is due to an accredited institution closing, the death of a worker's immediate family member, or documented changes in the worker's objective medical condition. If the interruption is due to the worker's actions, the worker's entitlement to temporary total disability is suspended.

Future Vocational Assistance: A worker who chooses one of the vocational plan options may be entitled to future vocational assistance if the claim is re-opened based on an aggravation or the worker files a new claim. If the worker previously completed a vocational plan, then the total amount available for a later claim would be \$12,000 over two years. If the worker declined to participate in a vocational plan, the worker is entitled to vocational assistance for a later claim or re-opening that occurs five years after the date the worker chose not to participate. Future vocational assistance is limited to 18 months and \$12,000 minus the amount expended by L&I or the self-insurer for training. The choice not to participate in vocational training in a subsequent claim or re-opening is not available.

Payment of Employer's Costs: Costs are chargeable to the employer's cost experience or are to be paid by the self-insurer. For plans implemented on or after January 1, 2008, the L&I director has discretion to pay the employer costs from the temporary fund under the following circumstances: (1) the worker previously participated in a vocational plan or selected a worker option; (2) the worker's prior vocational plan or selected option was based on an approved

plan or option on or after January 1, 2008; and (3) the date of injury or disease manifestation is within the period of time used to determine the state fund employer's experience factor.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Labor, Commerce, Research & Development): The creation of a temporary vocational fund is eliminated and replaced with the ability to offset employer claim costs through the Medical Aid Fund with a separate accounting of these costs and a report to the vocational rehabilitation subcommittee and the Legislature. The report will also include the subcommittee's recommendations of how and whether assessments to self-insurers for their costs should be implemented, and adds to the list of criteria for the director to consider when making a discretionary decision for reimbursement from the Medical Aid Fund for claim costs that the vocational services must be for a subsequent claim that resulted from employment and work-related activities beyond the worker's documented restrictions.

A report is added to the independent review and study on the department's performance with regard to the provision of vocational services, the skills acquired by workers who receive retraining, the types of programs approved, whether the workers are employed and at what jobs and wages, information concerning those workers who choose the alternative option, and other elements that may be adopted through rule in collaboration with the committee. The substitute bill corrects dates for which reports of the researcher are due; clarifies that vocational services and temporary total disability compensation will be terminated effective the starting date for a job when the employer makes the job offer within 15 days following the commencement of vocational plan development services; and also clarifies that the employer may still make a job offer after this initial 15 day period, which the worker may accept. The extension of time for plan development to be completed is limited to good cause reasons. The vocational plan development must be completed in 90 days. The frequency and reasons for good cause extensions to be reported to the vocational rehabilitation subcommittee is required.

Appropriation: None.

Fiscal Note: Requested on February 8, 2007.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect January 1, 2008 and expires June 20, 2013.

Staff Summary of Public Testimony: PRO: The vocational rehabilitation (VR) system, as it is currently configured, does not work for either workers or employers, despite the efforts of vocational counselors. Last year the state spent \$44 million on VR assessments and \$6 million on actual VR services. This is a skewed way to provide VR services. This bill is a compromise; not everyone got what they wanted. The increased upfront costs will be repaid in better outcomes for workers. L&I plans to work with labor and large and small employers to make sure the intended consequences of the bill are realized. The bill does not address the finality of a claim; however, if the pilot is successful, the worker will increase his or her skills and, if hurt again, the vocational counselor will have an even greater number of skills on which to work with that worker. The pilot lasts five years, and it has to be that long because it takes two years to retrain someone, and after that two years, the worker will be monitored to see how he or she fares. This legislation is better than the VR that employers and workers

have right now. Recidivism is a huge problem in the construction industry and this bill allows employers to address that issue. The bill also includes improved accountability measures. This bill allows workers to invest in the process, takes the shackles off the vocational counselors, gets the worker back to work, and experiments with the Worksource system.

CON: There is not enough accountability in the bill to deal with the habitual VR repeaters in the construction industry. This legislation should continue to be worked. Farmer workers do not generally use VR. It would be helpful to have specific VR to deal with agricultural workers. The 15 day period within which an employer must offer return to work is not long enough. Self-insurers should contribute to the temporary fund; if it is funded through a transfer of \$20 million from the medical aid fund, then only state fund employers and employees are contributing to the fund. In the performance measures, there should be language requiring a look at whether the worker is making a better wage after VR than before. VR is a huge issue for small businesses. The system should be fixed, but not sure this bill will do it. There are increased costs and no benchmarks, just "hope" that the bill will work as intended. The vocational plan should be done in 90 days and L&I should not be allowed to extend that time period. The bill should not let VR money be spent on buying tools and equipment for self-employment purposes.

Persons Testifying: PRO: Peter Bogdanoff, Governor's Executive Policy Office; Judy Schurke, Acting Director, L&I; Vickie Kennedy, L&I; Terry Herring, Washington State Trial Lawyers Association; Lori Carlson, Sellen Construction; Jeff Johnson, Washington State Labor Council; Owen Linch, Teamsters; Dave Johnson, Building and Construction Trades Council; Tina Coakley, Boeing; Kris Tefft, Association of Washington Business.

CON: Amy Brackenbury, Building Industry Association of Washington; Dan Fazio, Farm Bureau; Gary Smith, Independent Business Association; Carolyn Logue, National Federation of Independent Business.