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HOUSE BILL 2073

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State of Washington

60th Legislature

2007 Regular Session

By Representatives Conway, Wood, Kenney, Moeller, Simpson and Ormsby;  
by request of Governor Gregoire

Read first time 02/07/2007. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to a pilot program for vocational rehabilitation  
2 services; amending RCW 51.32.095; adding a new section to chapter 51.32  
3 RCW; creating a new section; providing an effective date; and providing  
4 an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read  
7 as follows:

8 (1) One of the primary purposes of this title is to enable the  
9 injured worker to become employable at gainful employment. To this  
10 end, the department or self-insurers shall utilize the services of  
11 individuals and organizations, public or private, whose experience,  
12 training, and interests in vocational rehabilitation and retraining  
13 qualify them to lend expert assistance to the supervisor of industrial  
14 insurance in such programs of vocational rehabilitation as may be  
15 reasonable to make the worker employable consistent with his or her  
16 physical and mental status. Where, after evaluation and recommendation  
17 by such individuals or organizations and prior to final evaluation of  
18 the worker's permanent disability and in the sole opinion of the  
19 supervisor or supervisor's designee, whether or not medical treatment

1 has been concluded, vocational rehabilitation is both necessary and  
2 likely to enable the injured worker to become employable at gainful  
3 employment, the supervisor or supervisor's designee may, in his or her  
4 sole discretion, pay or, if the employer is a self-insurer, direct the  
5 self-insurer to pay the cost as provided in (~~subsection (3) of this~~  
6 ~~section~~) section 2 of this act.

7 (2) When in the sole discretion of the supervisor or the  
8 supervisor's designee vocational rehabilitation is both necessary and  
9 likely to make the worker employable at gainful employment, then the  
10 following order of priorities shall be used:

11 (a) Return to the previous job with the same employer;

12 (b) Modification of the previous job with the same employer  
13 including transitional return to work;

14 (c) A new job with the same employer in keeping with any  
15 limitations or restrictions;

16 (d) Modification of a new job with the same employer including  
17 transitional return to work;

18 (e) Modification of the previous job with a new employer;

19 (f) A new job with a new employer or self-employment based upon  
20 transferable skills;

21 (g) Modification of a new job with a new employer;

22 (h) A new job with a new employer or self-employment involving on-  
23 the-job training;

24 (i) Short-term retraining and job placement.

25 (3)(a) Except as provided in (b) of this subsection, costs for  
26 vocational rehabilitation benefits allowed by the supervisor or  
27 supervisor's designee under subsection (1) of this section may include  
28 the cost of books, tuition, fees, supplies, equipment, transportation,  
29 child or dependent care, and other necessary expenses for any such  
30 worker in an amount not to exceed three thousand dollars in any fifty-  
31 two week period except as authorized by RCW 51.60.060, and the cost of  
32 continuing the temporary total disability compensation under RCW  
33 51.32.090 while the worker is actively and successfully undergoing a  
34 formal program of vocational rehabilitation.

35 (b) Beginning with vocational rehabilitation plans approved on or  
36 after July 1, 1999, costs for vocational rehabilitation benefits  
37 allowed by the supervisor or supervisor's designee under subsection (1)  
38 of this section may include the cost of books, tuition, fees, supplies,

1 equipment, child or dependent care, and other necessary expenses for  
2 any such worker in an amount not to exceed four thousand dollars in any  
3 fifty-two week period except as authorized by RCW 51.60.060, and the  
4 cost of transportation and continuing the temporary total disability  
5 compensation under RCW 51.32.090 while the worker is actively and  
6 successfully undergoing a formal program of vocational rehabilitation.

7 (c) The expenses allowed under (a) or (b) of this subsection may  
8 include training fees for on-the-job training and the cost of  
9 furnishing tools and other equipment necessary for self-employment or  
10 reemployment. However, compensation or payment of retraining with job  
11 placement expenses under (a) or (b) of this subsection may not be  
12 authorized for a period of more than fifty-two weeks, except that such  
13 period may, in the sole discretion of the supervisor after his or her  
14 review, be extended for an additional fifty-two weeks or portion  
15 thereof by written order of the supervisor.

16 (d) In cases where the worker is required to reside away from his  
17 or her customary residence, the reasonable cost of board and lodging  
18 shall also be paid.

19 (e) Costs paid under this subsection shall be chargeable to the  
20 employer's cost experience or shall be paid by the self-insurer as the  
21 case may be.

22 (4) In addition to the vocational rehabilitation expenditures  
23 provided for under subsection (3) of this section, an additional five  
24 thousand dollars may, upon authorization of the supervisor or the  
25 supervisor's designee, be expended for: (a) Accommodations for an  
26 injured worker that are medically necessary for the worker to  
27 participate in an approved retraining plan; and (b) accommodations  
28 necessary to perform the essential functions of an occupation in which  
29 an injured worker is seeking employment, consistent with the retraining  
30 plan or the recommendations of a vocational evaluation. The injured  
31 worker's attending physician must verify the necessity of the  
32 modifications or accommodations. The total expenditures authorized in  
33 this subsection and the expenditures authorized under RCW 51.32.250  
34 shall not exceed five thousand dollars.

35 (5) When the department has approved a vocational plan for a worker  
36 prior to January 1, 2008, regardless of whether the worker has begun  
37 participating in the approved plan, vocational rehabilitation services  
38 shall be provided under this section.

1 When the department has approved a vocational plan for a worker  
2 between January 1, 2008, through June 30, 2013, vocational  
3 rehabilitation services shall be provided under the pilot program  
4 established in section 2 of this act.

5 (6) The department shall establish criteria to monitor the quality  
6 and effectiveness of rehabilitation services provided by the  
7 individuals and organizations used under subsection (1) of this  
8 section. The state fund shall make referrals for vocational  
9 rehabilitation services based on these performance criteria.

10 ~~((+6))~~ (7) The department shall engage in, where feasible and  
11 cost-effective, a cooperative program with the state employment  
12 security department to provide job placement services under this  
13 section and section 2 of this act.

14 ~~((+7))~~ (8) The benefits in this section and section 2 of this act  
15 shall be provided for the injured workers of self-insured employers.  
16 Self-insurers shall report both benefits provided and benefits denied  
17 under this section and section 2 of this act in the manner prescribed  
18 by the department by rule adopted under chapter 34.05 RCW. The  
19 director may, in his or her sole discretion and upon his or her own  
20 initiative or at any time that a dispute arises under this section or  
21 section 2 of this act, promptly make such inquiries as circumstances  
22 require and take such other action as he or she considers will properly  
23 determine the matter and protect the rights of the parties.

24 ~~((+8))~~ (9) Except as otherwise provided in this section or section  
25 2 of this act, the benefits provided for in this section and section 2  
26 of this act are available to any otherwise eligible worker regardless  
27 of the date of industrial injury. However, claims shall not be  
28 reopened solely for vocational rehabilitation purposes.

29 NEW SECTION. Sec. 2. A new section is added to chapter 51.32 RCW  
30 to read as follows:

31 (1)(a) The legislature intends to create improved vocational  
32 outcomes for Washington state injured workers and employers through  
33 legislative and regulatory change under a pilot program for the period  
34 of January 1, 2008, through June 30, 2013. This pilot vocational  
35 system is intended to allow opportunities for eligible workers to  
36 participate in meaningful retraining in high demand occupations,  
37 improve successful return to work and achieve positive outcomes for

1 workers, reduce the incidence of repeat vocational services, increase  
2 accountability and responsibility, and improve cost predictability. To  
3 facilitate the study and evaluation of the results of the proposed  
4 changes, the department shall establish a temporary vocational cost  
5 fund to minimize any unintended financial impacts to Washington  
6 employers who, in partnership with Washington workers, support the  
7 workers' compensation system through premium contributions and other  
8 assessments. The department shall initially fund the temporary  
9 vocational cost fund through the transfer of twenty million dollars  
10 from the medical aid account effective July 1, 2008. Additional funds  
11 may be transferred from the medical aid account as deemed necessary by  
12 the director. The director may, upon recommendation of the department  
13 actuary, abolish this fund five years after the end of the pilot  
14 program.

15 (b) An independent review and study of the effects of the pilot  
16 program shall be conducted to determine whether it has achieved the  
17 appropriate outcomes at reasonable cost to the system. The department  
18 may adopt rules to further define the scope and elements of the  
19 required study.

20 (c) In implementing the pilot program, the department shall:

21 (i) Establish a vocational initiative project that includes  
22 participation by the department as a partner with WorkSource, the  
23 established state system that administers the federal workforce  
24 investment act of 1998. As a partner, the department shall place  
25 vocational professional full-time employees at pilot WorkSource  
26 locations; refer some workers for vocational services to these  
27 vocational professionals; and work with employers in work source pilot  
28 areas to market the benefits of on-the-job training programs and with  
29 community colleges to reserve slots in high demand programs. These on-  
30 the-job training programs and community college slots may be considered  
31 by both department and private sector vocational professionals for  
32 vocational plan development.

33 (ii) Develop and maintain a register of state fund and self-  
34 insured workers who have been retrained or have selected any of the  
35 vocational options described in this section for at least the duration  
36 of the pilot program.

37 (iii) Create a vocational rehabilitation subcommittee made up of  
38 members appointed by the director for at least the duration of the

1 pilot program. This subcommittee shall provide the business and labor  
2 partnership needed to maintain focus on the intent of the pilot  
3 program, as described in this section, and provide consistency and  
4 transparency to the development of rules and policies. The  
5 subcommittee shall report to the director at least annually and  
6 recommend to the director and the legislature any additional statutory  
7 changes needed, which may include extension of the pilot period until  
8 December 1, 2013.

9 (2)(a) For the purposes of this section, the day the worker  
10 commences vocational plan development means the date the department  
11 refers the worker's case to a vocational professional for plan  
12 development services.

13 (b) When vocational rehabilitation is both necessary and likely to  
14 make the worker employable at gainful employment, he or she shall be  
15 provided with services necessary to develop a vocational plan that, if  
16 completed, would render the worker employable. The vocational  
17 professional assigned to the claim shall, at the initial meeting with  
18 the worker, fully inform the worker of the return-to-work priorities  
19 set forth in RCW 51.32.095(2) and of his or her rights and  
20 responsibilities under the workers' compensation vocational system.  
21 The department shall provide tools to the vocational professional for  
22 communicating this and other information required by RCW 51.32.095 and  
23 this section to the worker.

24 (c) On the date the department refers the case to a vocational  
25 professional for plan development, the department shall also inform the  
26 employer in writing of the employer's right to proffer a valid return  
27 to work offer. To be valid, the offer must be for gainful employment  
28 in a permanent position with the employer of injury, consistent with  
29 the worker's documented physical restrictions as provided by the  
30 worker's health care provider. If the employer fails to communicate a  
31 valid job offer within fifteen calendar days of the day the worker  
32 commences vocational plan development, the worker may decline any  
33 subsequent offer and choose to remain in vocational plan development  
34 and participate in the identified vocational plan or option.

35 (3)(a) All vocational plans must contain an accountability  
36 agreement signed by the worker detailing expectations regarding  
37 progress, attendance, and other factors influencing successful

1 participation in the plan. Failure to abide by the agreed expectations  
2 may result in suspension of vocational benefits pursuant to RCW  
3 51.32.110.

4 (b) Any formal education included as part of the vocational plan  
5 must be for an accredited or licensed program.

6 (c) The vocational plan for an individual worker must be completed  
7 and submitted to the department within ninety days of the day the  
8 worker commences vocational plan development. The department may by  
9 rule adopted pursuant to chapter 34.05 RCW create exceptions and  
10 extensions to this requirement.

11 (d) Costs for the vocational plan may include books, tuition, fees,  
12 supplies, equipment, child or dependent care, training fees for on-the-  
13 job training, the cost of furnishing tools and other equipment  
14 necessary for self-employment or reemployment, and other necessary  
15 expenses in an amount not to exceed twelve thousand dollars. This  
16 amount shall be adjusted effective July 1 of each year for vocational  
17 plans approved on or after this date but before June 30 of the next  
18 year based on the average percentage change in tuition for the next  
19 fall quarter for all Washington state community colleges.

20 (e) The duration of the vocational plan shall not exceed two years  
21 from the date the plan is implemented. The worker shall receive  
22 temporary total disability compensation under RCW 51.32.090 and the  
23 cost of transportation while he or she is actively and successfully  
24 participating in a vocational plan.

25 (f) If the worker is required to reside away from his or her  
26 customary residence, the reasonable cost of board and lodging shall  
27 also be paid.

28 (g)(i) Costs paid under this subsection shall be chargeable to the  
29 employer's cost experience or shall be paid by the self-insurer, as the  
30 case may be. For vocational plans implemented on or after January 1,  
31 2008, the costs may be paid from the temporary fund established in  
32 subsection (1) of this section at the sole discretion of the director  
33 under the following circumstances:

34 (A) The worker previously participated in a vocational plan or  
35 selected a worker option as described in subsection (4) of this  
36 section;

37 (B) The worker's prior vocational plan or selected option was based  
38 on an approved plan or option on or after January 1, 2008; and

1 (C) The date of injury or disease manifestation is within the  
2 period of time used to calculate the state fund employer's experience  
3 factor.

4 (ii) The vocational plan costs charged to this fund shall include  
5 the costs of temporary total disability benefits, except those payable  
6 from the supplemental pension fund, from the date the vocational plan  
7 is implemented to the date the worker completes the plan or ceases  
8 participation. The vocational costs paid from this fund shall not be  
9 charged to the state fund employer's cost experience. The self-insured  
10 employer whose worker participated in a plan as described in (g)(i)(A)  
11 and (B) of this subsection may request the director exercise his or her  
12 discretion to reimburse the employer from this fund for the vocational  
13 plan costs and temporary total disability compensation paid.

14 (4) When the worker, with the assistance of a vocational  
15 professional, has completed the development of the vocational plan as  
16 described in subsection (3) of this section, the vocational plan must  
17 be submitted to the department for approval. To obtain approval, the  
18 vocational professional must submit the completed plan to the  
19 department and the worker. Upon approval of the plan by the  
20 department, the worker has fifteen calendar days to elect one of the  
21 following two options.

22 (a) Option 1: The department implements and the worker  
23 participates in the vocational plan developed by the vocational  
24 professional and approved by the worker and the department.

25 (b) Option 2: The worker declines to participate in the vocational  
26 plan and instead is entitled to payment of an amount equal to six  
27 months of temporary total disability compensation under RCW 51.32.090,  
28 paid in biweekly payments in accordance with the worker's schedule of  
29 temporary total disability payments. These payments will not include  
30 interest on the unpaid balance, and the department may provide the  
31 entire amount due in a lump sum payment at its discretion. The amount  
32 of tuition benefits or educational costs as described in the vocational  
33 plan are available to the worker, upon application to the department or  
34 self-insurer, for a period of five years after the date of option  
35 election and may be expended at an accredited institution for tuition,  
36 books, fees, and tools required for the program without department or  
37 employer oversight. The value of the tuition and/or educational costs



1 shall increase based on the changes in tuition as provided in  
2 subsection (3)(d) of this section. The department shall close the  
3 claim effective the date of option 2 election.

4 (c) At the sole discretion of the director, if vocational  
5 assistance is both necessary and likely to prevent permanent and total  
6 disability under RCW 51.32.060, the department may order the provision  
7 of vocational services for a worker, not to exceed the level of  
8 benefits as described in subsection (3)(d) and (e) of this section  
9 without regard to the worker's prior option selection previously  
10 expended in the claim.

11 (5)(a) As used in this section, "vocational plan interruption"  
12 means an occurrence that disrupts a vocational plan to the extent that  
13 the employability goal is no longer attainable within the cost and time  
14 limits detailed in the plan. Institutionally scheduled breaks in  
15 educational programs or occasional absence due to illness are not  
16 vocational plan interruptions.

17 (b) When a vocational plan interruption is beyond the control of  
18 the worker, the worker may recommence the plan. The department or self-  
19 insurer shall credit any time and money expended prior to the  
20 interruption necessary to complete the plan. A vocational plan  
21 interruption is beyond the control of the worker when it is due to the  
22 closure of the accredited institution, the death of the worker's  
23 father, mother, spouse, sibling, or child, or documented changes in the  
24 workers objective medical condition that prevent further participation  
25 in the vocational plan.

26 (c) When a vocational plan interruption is the result of the  
27 worker's actions, the worker's entitlement to temporary total  
28 disability payments shall be suspended. If the plan is recommenced, or  
29 a new plan is developed, the department or self-insurer shall not  
30 credit any time and money expended prior to the plan interruption. A  
31 vocational plan interruption is the result of the worker's actions when  
32 the worker fails to meet attendance expectations set by the training or  
33 educational institution or fails to achieve passing grades or  
34 acceptable performance reviews.

35 (d) The department may adopt rules to provide appropriate  
36 exceptions and to further define and provide examples of vocational  
37 plan interruptions.

1 (6) A worker who receives vocational assistance, in the form of  
2 either of the options described in subsection (4) of this section, and  
3 files an aggravation of the accepted injury or occupational disease or  
4 files a new claim, may be entitled to future vocational assistance.

5 (a) If the worker selects option 1 under subsection (4) of this  
6 section and successfully completes the identified vocational plan, he  
7 or she may be eligible for vocational services under a subsequent claim  
8 as provided in RCW 51.32.095(2) or following the reopening of the claim  
9 for which retraining was provided. If the worker is eligible for  
10 vocational services following the reopening of the claim, the total  
11 amount available for vocational services are subject to the limitations  
12 under subsection (3) of this section.

13 (b) If the worker selects option 2 under subsection (4) of this  
14 section, and the date of injury or disease manifestation for the  
15 subsequent claim or the date of reopening of the existing claim occurs  
16 less than five years from the date of the prior closure under  
17 subsection (4) of this section, any retraining plan is limited to  
18 eighteen months and the value of the total amount of benefits under  
19 subsection (3) of this section less any moneys expended by the  
20 department or self-insurer for training at an accredited institution as  
21 provided in subsection (4)(b) of this section. The option 2 selection  
22 under subsection (4)(b) of this section is not available to the worker  
23 under the subsequent claim or reopening. Any tuition benefits not yet  
24 expended under an option 2 selection are only available for the  
25 implementation of a vocational retraining plan.

26 (c) Under the subsequent claim, the director may allow additional  
27 training time and tuition money, without regard to the worker's prior  
28 option 2 selection but not to exceed the limits provided in subsection  
29 (3) of this section, when additional time or tuition money would make  
30 the worker employable.

31 NEW SECTION. **Sec. 3.** The department of labor and industries shall  
32 adopt rules necessary to implement this act.

33 NEW SECTION. **Sec. 4.** This act takes effect January 1, 2008.

1        NEW SECTION.    **Sec. 5.**    This act expires June 30, 2013.

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