

# SENATE BILL REPORT

## ESSB 6035

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As Passed Senate, March 12, 2009

**Title:** An act relating to retrospective rating plans.

**Brief Description:** Concerning retrospective rating plans.

**Sponsors:** Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, McDermott, Franklin, Keiser, Jacobsen, Fraser, Regala, Haugen, Murray, Kline and McAuliffe).

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 2/17/09, 2/19/09, 2/23/09 [DPS, DNP].

Passed Senate: 3/12/09, 25-24.

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report:** That Substitute Senate Bill No. 6035 be substituted therefor, and the substitute bill do pass.

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

**Minority Report:** Do not pass.

Signed by Senators Holmquist, Ranking Minority Member; Honeyford and King.

**Staff:** Mac Nicholson (786-7445)

**Background:** A retrospective rating plan is an optional program offered by the Department of Labor and Industries (L&I) that allows groups of employers to assume a portion of industrial insurance risk. Employers in a retrospective rating program group their individual premiums and claim losses as a single entity. Premiums for the group are adjusted based on the group's actual claim losses during the coverage period. The group will receive a refund if the combined premiums exceed the combined claim losses, and the group will be assessed additional premiums if the combined claim losses exceed the combined premiums.

A retrospective rating group must be composed of employers who are substantially similar, considering their employees' services or activities, and the group must seek to substantially improve workplace safety and accident prevention for the group's members. Sponsors of a retrospective rating group must exist for a purpose independent of insurance purposes and

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must select a single, broad industry or business category for the group. Once a category is selected, L&I must allow all risk classifications reasonably related to that business or industry category into the group.

**Summary of Engrossed Substitute Bill:** A number of legislative findings are made relating to retrospective rating plans. The stated intent of the legislation is to allow and encourage retrospective rating group sponsoring entities to use retrospective rating refunds to create and maintain programs that improve workplace safety, prevent accidents, and improve worker outcomes while distributing the remainder of the refund to employer members of the group subject to optional annual authorizations by the employer members of the group, and to make information concerning the sponsoring entities' administration of the program publicly available.

L&I must conduct an actuarial review of the retrospective rating program annually for five years beginning January 1, 2010. The review must include an examination of the method used to calculate retrospective premiums, refunds, and assessments; an examination of the impact retrospective rating refunds and assessments have on the accident fund; and an examination of other factors necessary to conduct an actuarial review. L&I must report to the Legislature annually on the actuarial review.

Sponsoring entities must distribute the refund or adjustment to employers in the group based on a distribution plan within a time period set forth in the plan. The distribution plan must be disclosed to member employers and L&I. L&I must make the distribution plan publicly available, excluding financial information specific to individual employer members. A sponsoring entity may keep a portion of the refund for reasonable administrative costs; costs directly related to the development and implementation of a safety plan to increase workplace safety and accident prevention; costs directly related to claims assistance provided to member employers; and to establish and maintain reserves for the sole purpose of covering the costs of future potential assessments. The sponsoring entity must keep a detailed list of costs for which a portion of the refund was retained and disclose this list to member employers and to L&I. The sponsoring entity must also disclose specific purposes for which administrative costs were incurred.

A sponsoring entity may also retain a portion of the refund due an employer member if the member has provided written authorization to do so. The written authorizations are effective for one year. The sponsoring entity must inform the employer of how much has been withheld. Amounts retained by a sponsoring entity may be used for any legal purpose, including purposes unrelated to worker safety and accident prevention.

L&I must define required elements of a retrospective rating safety plan through the rule making process, and sponsoring entities must submit safety plans to L&I annually.

Sponsoring entities cannot require a participating member or applicant to agree to reenroll in the group's future coverage period, maintain membership in the sponsoring entity or any other organization beyond the coverage period, or contribute funds to the sponsoring entity.

**Appropriation:** None.

**Fiscal Note:** Requested on February 14, 2009.

**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: There needs to be more oversight of the retro program if it took so long to find the problem that triggered the overstated refunds. This bill provides common sense reforms that should have been adopted years ago. Why has the state allowed the workers comp system to operate on standards that wouldn't be acceptable for any other government programs? If L&I premiums are too high, they should be adjusted and if there is overage it should be used in a useful way for every employer. This bill is a step in the right direction and provides oversight and transparency of the system. The retro system is being abused and mismanaged. The program is lacking in oversight and fails to safeguard the premiums paid by employers. Retro refunds are being used for purposes other than improving worker safety. Virtually every employer who pays workers comp is having their money abused, and businesses deserve a clear accounting of how funds are being used. Small businesses pay a substantial amount of money for L&I premiums, and it was shocking to find out that nonretro programs incurred additional costs. Companies should not have to pay higher L&I rates to maintain autonomy. Nothing in this bill would interfere with any of the deliverables on the outstanding retro study. The Legislature should care about how retro groups acquire their money given the large number of nonretro public employers in the workers compensation fund. Because of the error, nonretro employers subsidized the retro program, including public employers. There are questionable subsidies being made for retro employers.

CON: This bill is an inappropriate intrusion into the contractual relationship which retro members enter into voluntarily. If employers don't like how a retro association is run, they can simply choose another. There are benefits to retro associations, and the members don't need to be protected from it. Retro programs provide safety programs and claims management services which benefits employers and employees alike. Employers may see smaller refunds under this legislation because associations are responsible for failure to perform issues and assessments. The bill is unlikely to accomplish its stated goals. Retro programs provide win-win situations. The services provided by associations are helpful for employers, improve worker safety, and help employers comply with workers compensation laws. This bill is premature, as there is a retro proviso study evaluating and making recommendations about the retro program. The coding error was discovered because of the retro proviso study. It would be irresponsible to move a bill before the final report is issued in July 2009. Nothing in this bill would have detected or prevented the coding error. Retro groups are voluntary and develop programs based on interests of their members.

OTHER: L&I found an error in a programming code that overstated the amount of nonretro losses, which resulted in more refunds to the retro pool. L&I is working to correct the error and determine the extent of the overstated refunds. L&I is also working with the Attorney General about legal recourse. There are some sections of the bill that might have unintended consequences on issues that are being studied by the retro proviso workgroup.

**Persons Testifying:** PRO: Matt Learner, Front Seat Software; Susan Mathews, T.I. Northwest Corporation; Rick Dubrow, A-1 Builders; Laura Feshbach, Harmatta Construction Inc.; Charlie Maliszewski, Resources for Sustainable Communities; Owen Linch, Joint Council of Teamsters.

CON: Nancy Dicus, TOC Management Services; Stephen Seager, Foushee Associates; Bill Zimmerman, Bi-Zi Farms, Washington Farm Bureau; Don Stolz, Stolz Northwes, Inc.; Mark Shaffer, Mark's Drywall; Tammie Hetrick, Washington Retail Association; Kris Tefft, Association of Washington Business.

OTHER: Judy Schurke, L&I.