

# SENATE BILL REPORT

## SB 6081

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As Reported by Senate Committee On:  
Commerce & Labor, January 27, 2016  
Ways & Means, February 4, 2016

**Title:** An act relating to creating a labor and industries ombuds within the department of commerce.

**Brief Description:** Creating a labor and industries ombuds within the department of commerce.

**Sponsors:** Senators Baumgartner, Hasegawa, Conway and Braun.

**Brief History:**

**Committee Activity:** Commerce & Labor: 1/25/16, 1/27/16 [DP-WM, w/oRec].  
Ways & Means: 2/03/16, 2/04/16 [DPS, w/oRec].

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass and be referred to Committee on Ways & Means.  
Signed by Senators Baumgartner, Chair; Braun, Vice Chair; King and Warnick.

**Minority Report:** That it be referred without recommendation.  
Signed by Senators Hasegawa, Ranking Minority Member; Conway and Keiser.

**Staff:** Susan Jones (786-7404)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 6081 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Hewitt, O'Ban, Padden, Parlette, Rolfes, Schoesler and Warnick.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Keiser, Assistant Ranking Member on the Capital Budget; Conway, Darneille, Hasegawa, Nelson and Pedersen.

**Staff:** Julie Murray (786-7711)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:** Industrial Insurance. Under the state's industrial insurance laws - workers' compensation - employers must insure through the state fund administered by the Department of Labor and Industries (L&I) or, if qualified, may self-insure.

Ombuds for Workers of Self-Insured Employers. The office of the ombuds for workers of industrial insurance self-insured employers was created in 2007. The ombuds is appointed by the Governor and reports directly to the Director of L&I. The ombuds holds office for a six-year term. The Governor may remove the ombuds only for neglect of duty, misconduct, or inability to perform duties.

Training and Experience. Any ombuds appointed must have training or experience, or both, in:

- Washington State industrial insurance including self-insurance programs;
- the Washington State legal system; and
- dispute or problem resolution techniques.

Powers and Duties. The ombuds has the following powers and duties:

- to act as an advocate for injured workers of self-insured employers;
- to offer and provide information on industrial insurance as appropriate to workers of self-insured employers;
- to identify, investigate, and facilitate resolution of industrial insurance complaints from workers of self-insured employers;
- to maintain a statewide toll-free telephone number for the receipt of complaints and inquiries; and
- to refer complaints to L&I when appropriate.

Liability, Discriminatory, Disciplinary, or Retaliatory actions. No ombuds is liable for good faith performance of responsibilities. No discriminatory, disciplinary, or retaliatory action may be taken against any employee for any information given to assist the ombuds in carrying out the ombuds' duties and responsibilities, unless done maliciously. The ombuds must develop referral procedures for complaints by the workers, and L&I must act as quickly as possible on any referred complaint.

Communications, Records, Confidentiality, and Disclosures. All communications by the ombuds, if reasonably related to the ombuds' responsibilities and done in good faith, are privileged and confidential, and serve as a defense to any action in libel or slander. Representatives of the office are generally exempt from being required to testify as to any privileged or confidential matters. All records and files of the ombuds relating to any complaint or investigation and the identities of complainants, witnesses, or injured workers are confidential unless disclosure is authorized by the complainant or injured worker. No disclosures may be made outside the office of the ombuds without the consent of a witness or complainant unless the disclosure is made without the identity of the person.

Reporting. The ombuds must provide the Governor with an annual report with:

- a description of the issues addressed during the past year and a description of case scenarios;
- an accounting of its monitoring activities; and

- an identification of the deficiencies in the industrial insurance system related to self-insurers and recommendations for remedial action.

**Summary of Bill (Recommended Substitute): Ombuds for Employers.** The ombuds for employers is created in the Department of Commerce (Commerce). The ombuds is appointed by the Governor and reports directly to the Director of Commerce and must not be physically located within L&I. The ombuds holds office for a six-year term and continues until reappointed or until the successor is appointed. The Governor may remove the ombuds only for neglect of duty, misconduct, or inability to perform duties.

**Training and Experience.** Any ombuds must have training or experience, or both, in the following:

- programs administered by L&I, including industrial insurance, occupational safety and health, and employment standards;
- the Washington State legal system; and
- dispute or problem resolution techniques, including investigation, mediation, and negotiation.

The ombuds must integrate information explaining the ombuds program and contact information into L&I existing brochures and materials to employers.

**Powers and Duties.** The ombuds has the following powers and duties:

- to act as an advocate for employers in interactions with L&I;
- to offer and provide information on L&I programs as appropriate to employers;
- to identify, investigate, and facilitate resolution of employer complaints relating to L&I programs; and
- to maintain a statewide toll-free telephone number for the receipt of complaints and inquiries.

**Liability, Discriminatory, Disciplinary, or Retaliatory actions.** The ombuds is not liable for good faith performance of its responsibilities. No discriminatory or retaliatory action may be taken against any employer for any information given to assist the ombuds in carrying out the ombuds' duties and responsibilities.

**Communications, Records, Confidentiality and Disclosures.** All communications by the ombuds done in good faith are privileged and confidential. The ombuds is generally exempt from being required to testify as to any privileged or confidential matters. All records and files of the ombuds relating to any complaint or investigation and the identities of complainants, witnesses, or workers are confidential unless disclosure is authorized by the employer. No disclosures may be made outside the office of the ombuds without the consent of the employer.

**Reporting.** The ombuds shall provide the Governor with an annual report with:

- a description of the issues addressed during the past year and a description of case scenarios;
- an accounting of the monitoring activities; and
- an identification of the deficiencies in programs administered by L&I related to interactions between L&I and employers, and recommendations for remedial action.

The first annual report is due on or before October 1, 2016. Subsequent reports are due on or before October 1 of each subsequent year.

State Spending Performance Statement. It is the legislature's specific public policy objective to provide employers with an independent resource to receive information and address concerns related to employer interactions with L&I. The legislature intends to:

- improve the customer service aspects for employers doing business with L&I;
- resolve employer complaints and disputes with L&I in a more timely fashion;
- Improve the knowledge employers have of industrial insurance, workplace safety, and workplace standards laws and regulations; and
- Improve the identification of employer issues and deficiencies with L&I programs and provide recommendations for change.

No later than January 1, 2026, the Joint Legislative Audit and Review Committee (JLARC) must review the program created by the act, determine its effectiveness, and provide a recommendation whether the program should be continued, modified, scheduled for sunset review at a future date, or terminated immediately. JLARC may require L&I and the ombuds to collect data as necessary to conduct the review and conduct surveys of employers and ombuds clients.

The act expires July 1, 2026.

**EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Substitute):** General fund appropriation is removed. Includes a state spending performance statement identifying goals of the new program and requires the Joint Legislative Audit and Review Committee to evaluate the effectiveness of the ombuds for employers against these goals. Expires the ombuds for employers on July 1, 2026.

**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 (Commerce & Labor):** PRO: This is a pretty simple and small step but one that can potentially provide a lot of help to employers. Frequently, there are calls from constituents expressing frustration with some aspect of L&I. Some of those might be right and some of those might be wrong. Having an ombuds outside of L&I will improve the customer service aspect of business friendliness and will give a logical channel for some of these people to feel like they are treated fairly. There is precedent for having an ombuds in a different agency.

**Persons Testifying (Commerce & Labor):** PRO: Senator Michael Baumgartner, prime sponsor.

**Persons Signed In To Testify But Not Testifying:** No one.

**Staff Summary of Public Testimony (Ways & Means):** None.

**Persons Testifying (Ways & Means):** No one.

**Persons Signed In To Testify But Not Testifying:** No one.