

SENATE BILL REPORT

SB 5084

As of January 30, 2023

Title: An act relating to creating a separate fund for the purposes of self-insured pensions and assessments.

Brief Description: Creating a separate fund for the purposes of self-insured pensions and assessments.

Sponsors: Senators Braun, Keiser and Mullet; by request of Department of Labor & Industries.

Brief History:

Committee Activity: Labor & Commerce: 1/12/23, 1/17/23 [DP-WM].
Ways & Means: 1/30/23.

Brief Summary of Bill

- Creates a self-insurance reserve fund for payments from self-insured employers related to workers' compensation pensions and from the overpayments reimbursement fund.
- Makes interest earned on the self-insurance reserve fund part of the fund.
- Allows the State Investment Board to determine any excess amounts in the self-insurance reserve fund and invest the excess amounts.
- Provides that the second injury fund will receive its proportionate share of earnings in the fund held by the State Treasurer's Office.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Braun, MacEwen, Robinson, Schoesler and Stanford.

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

Staff: Susan Jones (786-7404)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Tianyi Lan (786-7432)

Background: Workers' Compensation—General. Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to workers' compensation benefits, which may include medical, temporary time-loss, vocational rehabilitation benefits, and permanent disability benefits (pensions). The Department of Labor and Industries (L&I) administers the state's workers' compensation system.

State Fund Employers. In Washington, all employers must provide workers' compensation coverage for their employees. Most employers pay premiums to L&I for this insurance. Those are known as "state fund employers" because they insure through the state fund.

Self-Insured Employers. An employer may qualify as a self-insurer by establishing to L&I's satisfaction that the employer has sufficient financial ability to make certain the prompt payment of all workers' compensation benefits and all assessments which may become due from the employer. Those employers provide workers' compensation benefits directly to their own employees when a worker is injured in the course of employment. Self-insured employers do not pay premiums, but are assessed annually by L&I for their share of certain costs. The director imposes and collects assessments each fiscal year on all self-insurers in the amount of the estimated costs of administering their portion of the workers' compensation program, including assessments for the ombuds' office.

Pensions. For every case resulting in death or permanent total disability pension, a self-insurer must pay into the reserve fund a sum of money for that case equal to the estimated present cash value of the monthly payments calculated upon the basis of an annuity. The annuity values are based upon rates of mortality, disability, remarriage, and interest and the experience of the reserve fund. The deposits are made into the reserve fund and each self-insurer has an account within the reserve fund. Each account is credited with its proportionate share of interest on the fund.

As an alternative to paying the present cash value, a self-insured employer may file a bond with L&I along with a deposit payment equal to the first three months' payments. L&I administers payments of the pensions. The self-insured employer must reimburse L&I for these payments. There are penalties if the reimbursements are late. The deposit and penalties are placed in the reserve fund.

Second Injury. Whenever a worker has a bodily disability from any previous injury or disease, whether known or unknown to the employer, and suffers a further disability from injury or occupational disease in employment covered under workers' compensation and becomes totally and permanently disabled from the combined effects, or dies when death

was substantially accelerated by the combined effects, then:

- the experience record of a state fund employer at the time of the further injury or disease must be charged; and
- the self-insured employer must pay directly into the reserve fund only the accident cost which would have resulted solely from the further injury or disease, had there been no preexisting disability.

The accident cost must be based upon an evaluation of the disability by medical experts. The difference between the charge assessed to the employer at the time of the further injury or disease and the total cost of the pension reserve is assessed against the second injury fund.

Second Injury Fund. There is a second injury fund, administered by L&I, at the State Treasurer's Office. The purpose of the fund is to defray employer charges and support return-to-work outcomes. Payments are made to the fund from the accident and experience-rated assessments on self-insured employers. There is a calculation for these assessments. Current law does not address interest earnings on the second injury fund so the interest is deposited into the general fund.

Transfers. L&I may make periodic temporary interfund transfers between the reserve and supplemental pension funds to provide for payments from the supplemental pension fund.

Summary of Bill: Self-Insurance Reserve Fund. A self-insurance reserve fund is created in the State Treasurer's Office. Payments from self-insured employers related to pensions and from the overpayments reimbursement fund are paid into the self-insurance reserve fund, rather than the reserve fund. Interest or other earnings on the self-insurance reserve fund become part of the fund. If the State Investment Board (Board) determines there are funds in excess of the amounts needed to meet the self-insurance reserve fund's current expenditures, the Board may invest the excess funds.

The ability to make transfers between funds, includes the self-insurance reserve fund. L&I must notify the State Treasurer of transfers from the self-insurance reserve fund. L&I must provide for audits of the self-insurance reserve fund and prepare financial statements for the fund and the state fund pension reserve.

The experience of the self-insurance reserve fund is one of the factors to determine the annuity value for payment of pensions.

Second Injury Fund. The second injury fund will receive its proportionate share of earnings in the fund held by the State Treasurer's Office.

There is an emergency clause for the provision related to the second injury funds. The other provisions are effective on July 1, 2025.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony (Labor & Commerce): PRO: This bill helps the state and self-insurers by providing less volatility and more transparency. L&I's financial statements will separate out self-insurer's pensions funds from state fund pensions. Some of the funds L&I holds now do not accrue interest. These are funds deposited by self-insurers and they do not receive interest. This allows a higher return on these funds through the interest and investments. This promotes rate stability; and leverages the power of the State Investment Board to ensure investment income stays within the worker's compensation system. It prevents subsidization of self-insurance by the state fund rate payers. It fosters the mission of keeping the workers' compensation dollars in the workers' compensation funds. This issue was discussed at the advisory committee and was without controversy.

Persons Testifying (Labor & Commerce): PRO: Senator John Braun, Prime Sponsor; Tammy Fellin, Labor & Industries; Joe Kendo, Washington State Labor Council, AFL-CIO; Kris Tefft, Washington Self-Insurers Association.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: This bill redirects the interest from the current Second Injury Fund back into the fund which is the cost of the operating budget. The funds are paid by around 360 self-insured employers in Washington State. It also creates a self-insurance reserve fund to improve transparency, provide less volatility, and improve performance for self-insured citizens. All of the self-insured dollars will be put together to the new fund on July 1, 2025. The bill makes the fund invested by the State Investment Board for better returns. It reduces the annual assessment volatility for self-insured employers.

Persons Testifying (Ways & Means): PRO: Senator John Braun, Prime Sponsor; Tammy Fellin, Labor & Industries.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.