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ENGROSSED SUBSTITUTE HOUSE BILL 2073

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State of Washington

60th Legislature

2007 Regular Session

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Wood, Kenney, Moeller, Simpson and Ormsby; by request of Governor Gregoire)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to a pilot program for vocational rehabilitation  
2 services; amending RCW 51.32.095; adding new sections 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 or section 2 of this act, as appropriate. An injured worker  
7 may not participate in vocational rehabilitation under this section or  
8 section 2 of this act if such participation would result in a payment  
9 of benefits as described in RCW 51.32.240(5), and any benefits so paid  
10 shall be recovered according to the terms of that section.

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

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

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

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

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

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

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

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

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

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

29 (3)(a) (~~Except as provided in (b) of this subsection~~) For  
30 vocational plans approved prior to July 1, 1999, costs for vocational  
31 rehabilitation benefits allowed by the supervisor or supervisor's  
32 designee under subsection (1) of this section may include the cost of  
33 books, tuition, fees, supplies, equipment, transportation, child or  
34 dependent care, and other necessary expenses for any such worker in an  
35 amount not to exceed three thousand dollars in any fifty-two week  
36 period except as authorized by RCW 51.60.060, and the cost of  
37 continuing the temporary total disability compensation under RCW

1 51.32.090 while the worker is actively and successfully undergoing a  
2 formal program of vocational rehabilitation.

3 (b) (~~Beginning with vocational rehabilitation plans approved on or~~  
4 ~~after~~) When the department has approved a vocational plan for a worker  
5 between July 1, 1999, through December 31, 2007, costs for vocational  
6 rehabilitation benefits allowed by the supervisor or supervisor's  
7 designee under subsection (1) of this section may include the cost of  
8 books, tuition, fees, supplies, equipment, child or dependent care, and  
9 other necessary expenses for any such worker in an amount not to exceed  
10 four thousand dollars in any fifty-two week period except as authorized  
11 by RCW 51.60.060, and the cost of transportation and continuing the  
12 temporary total disability compensation under RCW 51.32.090 while the  
13 worker is actively and successfully undergoing a formal program of  
14 vocational rehabilitation.

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

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

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

30 (4) In addition to the vocational rehabilitation expenditures  
31 provided for under subsection (3) of this section and section 2 of this  
32 act, an additional five thousand dollars may, upon authorization of the  
33 supervisor or the supervisor's designee, be expended for: (a)  
34 Accommodations for an injured worker that are medically necessary for  
35 the worker to participate in an approved retraining plan; and (b)  
36 accommodations necessary to perform the essential functions of an  
37 occupation in which an injured worker is seeking employment, consistent  
38 with the retraining plan or the recommendations of a vocational

1 evaluation. The injured worker's attending physician must verify the  
2 necessity of the modifications or accommodations. The total  
3 expenditures authorized in this subsection and the expenditures  
4 authorized under RCW 51.32.250 shall not exceed five thousand dollars.

5 (5) When the department has approved a vocational plan for a worker  
6 prior to January 1, 2008, regardless of whether the worker has begun  
7 participating in the approved plan, costs for vocational rehabilitation  
8 benefits allowed by the supervisor or supervisor's designee under  
9 subsection (1) of this section are limited to those provided under  
10 subsections (3) and (4) of this section.

11 For vocational plans approved for a worker between January 1, 2008,  
12 through June 30, 2013, total vocational costs allowed by the supervisor  
13 or supervisor's designee under subsection (1) of this section shall be  
14 limited to those provided under the pilot program established in  
15 section 2 of this act, and vocational rehabilitation services shall  
16 conform to the requirements in section 2 of this act.

17 (6) The department shall establish criteria to monitor the quality  
18 and effectiveness of rehabilitation services provided by the  
19 individuals and organizations used under subsection (1) of this section  
20 and under section 2 of this act. The state fund shall make referrals  
21 for vocational rehabilitation services based on these performance  
22 criteria.

23 ~~((+6))~~ (7) The department shall engage in, where feasible and  
24 cost-effective, a cooperative program with the state employment  
25 security department to provide job placement services under this  
26 section and section 2 of this act.

27 ~~((+7))~~ (8) The benefits in this section and section 2 of this act  
28 shall be provided for the injured workers of self-insured employers.  
29 Self-insurers shall report both benefits provided and benefits denied  
30 under this section and section 2 of this act in the manner prescribed  
31 by the department by rule adopted under chapter 34.05 RCW. The  
32 director may, in his or her sole discretion and upon his or her own  
33 initiative or at any time that a dispute arises under this section or  
34 section 2 of this act, promptly make such inquiries as circumstances  
35 require and take such other action as he or she considers will properly  
36 determine the matter and protect the rights of the parties.

37 ~~((+8))~~ (9) Except as otherwise provided in this section or section  
38 2 of this act, the benefits provided for in this section and section 2

1 of this act are available to any otherwise eligible worker regardless  
2 of the date of industrial injury. However, claims shall not be  
3 reopened solely for vocational rehabilitation purposes.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.32 RCW  
5 to read as follows:

6 (1)(a) The legislature intends to create improved vocational  
7 outcomes for Washington state injured workers and employers through  
8 legislative and regulatory change under a pilot program for the period  
9 of January 1, 2008, through June 30, 2013. This pilot vocational  
10 system is intended to allow opportunities for eligible workers to  
11 participate in meaningful retraining in high demand occupations,  
12 improve successful return to work and achieve positive outcomes for  
13 workers, reduce the incidence of repeat vocational services, increase  
14 accountability and responsibility, and improve cost predictability. To  
15 facilitate the study and evaluation of the results of the proposed  
16 changes, the department shall establish the temporary funding of  
17 certain state fund vocational costs through the medical aid account to  
18 ensure the appropriate assessments to employers for the costs of their  
19 claims for vocational services in accordance with section 3 of this  
20 act.

21 (b) An independent review and study of the effects of the pilot  
22 program shall be conducted to determine whether it has achieved the  
23 appropriate outcomes at reasonable cost to the system. The review  
24 shall include, at a minimum, a report on the department's performance  
25 with regard to the provision of vocational services, the skills  
26 acquired by workers who receive retraining services, the types of  
27 training programs approved, whether the workers are employed, at what  
28 jobs and wages after completion of the training program and at various  
29 times subsequent to their claim closure, the number and demographics of  
30 workers who choose the option provided in subsection (4)(b) of this  
31 section, and their employment and earnings status at various times  
32 subsequent to claim closure. The department may adopt rules, in  
33 collaboration with the subcommittee created under (c)(iii) of this  
34 subsection, to further define the scope and elements of the required  
35 study. Reports of the independent researcher are due on December 1,  
36 2010, December 1, 2011, and December 1, 2012.

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

1 (i) Establish a vocational initiative project that includes  
2 participation by the department as a partner with WorkSource, the  
3 established state system that administers the federal workforce  
4 investment act of 1998. As a partner, the department shall place  
5 vocational professional full-time employees at pilot WorkSource  
6 locations; refer some workers for vocational services to these  
7 vocational professionals; and work with employers in work source pilot  
8 areas to market the benefits of on-the-job training programs and with  
9 community colleges to reserve slots in high demand programs. These on-  
10 the-job training programs and community college slots may be considered  
11 by both department and private sector vocational professionals for  
12 vocational plan development. The department will also assist  
13 stakeholders in developing additional vocational training programs in  
14 various industries, including but not limited to agriculture and  
15 construction. These programs will expand the choices available to  
16 injured workers in developing their vocational training plans with the  
17 assistance of vocational professionals.

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

22 (iii) Create a vocational rehabilitation subcommittee made up of  
23 members appointed by the director for at least the duration of the  
24 pilot program. This subcommittee shall provide the business and labor  
25 partnership needed to maintain focus on the intent of the pilot  
26 program, as described in this section, and provide consistency and  
27 transparency to the development of rules and policies. The  
28 subcommittee shall report to the director at least annually and  
29 recommend to the director and the legislature any additional statutory  
30 changes needed, which may include extension of the pilot period. The  
31 subcommittee shall provide input and oversight with the department  
32 concerning the study required under (b) of this subsection. The  
33 subcommittee shall provide recommendations for additional changes or  
34 incentives for injured workers to return to work with their employer of  
35 injury.

36 (iv) The department shall develop an annual report concerning  
37 Washington's workers' compensation vocational rehabilitation system to  
38 the legislature and to the subcommittee by December 1, 2009, and

1 annually thereafter with the final report due by December 1, 2012. The  
2 annual report shall include the number of workers who have participated  
3 in more than one vocational training plan beginning with plans approved  
4 on January 1, 2008, and in which industries those workers were  
5 employed. The final report shall include the department's assessment  
6 and recommendations for further legislative action, in collaboration  
7 with the subcommittee.

8 (2)(a) For the purposes of this section, the day the worker  
9 commences vocational plan development means the date the department or  
10 self-insurer notifies the worker of his or her eligibility for plan  
11 development services.

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

23 (c) On the date the worker commences vocational plan development,  
24 the department shall also inform the employer in writing of the  
25 employer's right to make a valid return-to-work offer during the first  
26 fifteen days following the commencement of vocational plan development.  
27 To be valid, the offer must be for bona fide employment with the  
28 employer of injury, consistent with the worker's documented physical  
29 and mental restrictions as provided by the worker's health care  
30 provider. When the employer makes a valid return-to-work offer, the  
31 vocational plan development services and temporary total disability  
32 compensation shall be terminated effective the starting date for the  
33 job without regard to whether the worker accepts the return-to-work  
34 offer. Following the fifteen-day period, the employer may still  
35 provide, and the worker may accept, any valid return-to-work offer.  
36 The worker's acceptance of such an offer shall result in the  
37 termination of vocational plan development or implementation services

1 and temporary total disability compensation effective the day the  
2 employment begins.

3 (3)(a) All vocational plans must contain an accountability  
4 agreement signed by the worker detailing expectations regarding  
5 progress, attendance, and other factors influencing successful  
6 participation in the plan. Failure to abide by the agreed expectations  
7 shall result in suspension of vocational benefits pursuant to RCW  
8 51.32.110.

9 (b) Any formal education included as part of the vocational plan  
10 must be for an accredited or licensed program or other program approved  
11 by the department. The department shall develop rules that provide  
12 criteria for the approval of nonaccredited or unlicensed programs.

13 (c) The vocational plan for an individual worker must be completed  
14 and submitted to the department within ninety days of the day the  
15 worker commences vocational plan development. The department may  
16 extend the ninety days for good cause. Criteria for good cause shall  
17 be provided in rule. The frequency and reasons for good cause  
18 extensions shall be reported to the subcommittee created under  
19 subsection (1)(c)(iii) of this section.

20 (d) Costs for the vocational plan may include books, tuition, fees,  
21 supplies, equipment, child or dependent care, training fees for on-the-  
22 job training, the cost of furnishing tools and other equipment  
23 necessary for self-employment or reemployment, and other necessary  
24 expenses in an amount not to exceed twelve thousand dollars. This  
25 amount shall be adjusted effective July 1 of each year for vocational  
26 plans or retraining benefits available under subsection (4)(b) of this  
27 section approved on or after this date but before June 30 of the next  
28 year based on the average percentage change in tuition for the next  
29 fall quarter for all Washington state community colleges.

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

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



1 (4) Vocational plan development services shall be completed within  
2 ninety days of commencing. During vocational plan development the  
3 worker shall, with the assistance of a vocational professional,  
4 participate in vocational counseling and occupational exploration to  
5 include, but not be limited to, identifying possible job goals,  
6 training needs, resources, and expenses, consistent with the worker's  
7 physical and mental status. A vocational rehabilitation plan shall be  
8 developed by the worker and the vocational professional and submitted  
9 to the department or self-insurer. Following this submission, the  
10 worker shall elect one of the following options:

11 (a) Option 1: The department or self-insurer implements and the  
12 worker participates in the vocational plan developed by the vocational  
13 professional and approved by the worker and the department or  
14 self-insurer. For state fund claims, the department must review and  
15 approve the vocational plan before implementation may begin. If the  
16 department takes no action within fifteen days, the plan is deemed  
17 approved. The worker may, within fifteen days of approval of the plan  
18 by the department, elect option 2.

19 (i) Following successful completion of the vocational plan, any  
20 subsequent assessment of whether vocational rehabilitation is both  
21 necessary and likely to enable the injured worker to become employable  
22 at gainful employment under RCW 51.32.095(1) shall include  
23 consideration of transferable skills obtained in the vocational plan.

24 (ii) If a vocational plan is successfully completed on a claim  
25 which is thereafter reopened as provided in RCW 51.32.160, the cost and  
26 duration available for any subsequent vocational plan is limited to  
27 that in subsection (3)(d) and (e) of this section, less that previously  
28 expended.

29 (b) Option 2: The worker declines further vocational services  
30 under the claim and receives an amount equal to six months of temporary  
31 total disability compensation under RCW 51.32.090. The award is  
32 payable in biweekly payments in accordance with the schedule of  
33 temporary total disability payments, until such award is paid in full.  
34 These payments shall not include interest on the unpaid balance.  
35 However, upon application by the worker, and at the discretion of the  
36 department, the compensation may be converted to a lump sum payment.  
37 The vocational costs defined in subsection (3)(d) of this section shall  
38 remain available to the worker, upon application to the department or

1 self-insurer, for a period of five years. The vocational costs shall,  
2 if expended, be available for programs or courses at any accredited or  
3 licensed institution or program from a list of those approved by the  
4 department for tuition, books, fees, supplies, equipment, and tools,  
5 without department or self-insurer oversight. The department shall  
6 issue an order as provided in RCW 51.52.050 confirming the option 2  
7 election, setting a payment schedule, and terminating temporary total  
8 disability benefits. The department shall thereafter close the claim.

9 (i) If within five years from the date the option 2 order becomes  
10 final, the worker is subsequently injured or suffers an occupational  
11 disease or reopens the claim as provided in RCW 51.32.160, and  
12 vocational rehabilitation is found both necessary and likely to enable  
13 the injured worker to become employable at gainful employment under RCW  
14 51.32.095(1), the duration of any vocational plan under subsection  
15 (3)(e) of this section shall not exceed eighteen months.

16 (ii) If the available vocational costs are utilized by the worker,  
17 any subsequent assessment of whether vocational rehabilitation is both  
18 necessary and likely to enable the injured worker to become employable  
19 at gainful employment under RCW 51.32.095(1) shall include  
20 consideration of the transferable skills obtained.

21 (iii) If the available vocational costs are utilized by the worker  
22 and the claim is thereafter reopened as provided in RCW 51.32.160, the  
23 cost available for any vocational plan is limited to that in subsection  
24 (3)(d) of this section less that previously expended.

25 (iv) Option 2 may only be elected once per worker.

26 (c) The director, in his or her sole discretion, may provide the  
27 worker vocational assistance not to exceed that in subsection (3) of  
28 this section, without regard to the worker's prior option selection or  
29 benefits expended, where vocational assistance would prevent permanent  
30 total disability under RCW 51.32.060.

31 (5)(a) As used in this section, "vocational plan interruption"  
32 means an occurrence which disrupts the plan to the extent the  
33 employability goal is no longer attainable. "Vocational plan  
34 interruption" does not include institutionally scheduled breaks in  
35 educational programs, occasional absence due to illness, or  
36 modifications to the plan which will allow it to be completed within  
37 the cost and time provisions of subsection (3)(d) and (e) of this  
38 section.

1 (b) When a vocational plan interruption is beyond the control of  
2 the worker, the department or self-insurer shall recommence plan  
3 development. If necessary to complete vocational services, the cost  
4 and duration of the plan may include credit for that expended prior to  
5 the interruption. A vocational plan interruption is considered outside  
6 the control of the worker when it is due to the closure of the  
7 accredited institution, when it is due to a death in the worker's  
8 immediate family, or when documented changes in the worker's accepted  
9 medical conditions prevent further participation in the vocational  
10 plan.

11 (c) When a vocational plan interruption is the result of the  
12 worker's actions, the worker's entitlement to benefits shall be  
13 suspended in accordance with RCW 51.32.110. If plan development or  
14 implementation is recommenced, the cost and duration of the plan shall  
15 not include credit for that expended prior to the interruption. A  
16 vocational plan interruption is considered a result of the worker's  
17 actions when it is due to the failure to meet attendance expectations  
18 set by the training or educational institution, failure to achieve  
19 passing grades or acceptable performance review, unaccepted or  
20 postinjury conditions that prevent further participation in the  
21 vocational plan, or the worker's failure to abide by the accountability  
22 agreement per subsection (3)(a) of this section.

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.32 RCW  
24 to read as follows:

25 (1) Costs paid for vocational services and plans shall be  
26 chargeable to the employer's cost experience or shall be paid by the  
27 self-insurer, as the case may be. For state fund vocational plans  
28 implemented on or after January 1, 2008, the costs may be paid from the  
29 medical aid fund at the sole discretion of the director under the  
30 following circumstances:

31 (a) The worker previously participated in a vocational plan or  
32 selected a worker option as described in section 2(4) of this act;

33 (b) The worker's prior vocational plan or selected option was based  
34 on an approved plan or option on or after January 1, 2008;

35 (c) For state fund employers, the date of injury or disease  
36 manifestation of the subsequent claim is within the period of time used  
37 to calculate their experience factor;

1 (d) The subsequent claim is for an injury or occupational disease  
2 that resulted from employment and work-related activities beyond the  
3 worker's documented restrictions.

4 (2) The vocational plan costs payable from the medical aid fund  
5 shall include the costs of temporary total disability benefits, except  
6 those payable from the supplemental pension fund, from the date the  
7 vocational plan is implemented to the date the worker completes the  
8 plan or ceases participation. The vocational costs paid from the  
9 medical aid fund shall not be charged to the state fund employer's cost  
10 experience.

11 (3) For the duration of the vocational pilot program, all expenses  
12 to the medical aid fund resulting from the director's discretionary  
13 decisions as provided in subsection (1) of this section shall be  
14 separately documented as a medical aid fund expenditure and reported to  
15 the vocational rehabilitation subcommittee and the legislature  
16 annually. This report shall include the number of claims for which  
17 relief to the state fund employer was provided and the average cost per  
18 claim. A report to the vocational rehabilitation subcommittee and the  
19 legislature shall also be made annually including the number of claims  
20 and average cost per claim reported by self-insured employers for  
21 claims meeting the requirements in subsection (1)(a), (b), and (d) of  
22 this section.

23 NEW SECTION. **Sec. 4.** The department of labor and industries shall  
24 adopt rules necessary to implement this act.

25 NEW SECTION. **Sec. 5.** This act takes effect January 1, 2008.

26 NEW SECTION. **Sec. 6.** This act expires June 30, 2013.

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