

**SSB 6035 - S AMD 235**

By Senators Kohl-Welles, Marr, and Kastama

ADOPTED 3/12/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3  
4 "NEW SECTION. **Sec. 1.** The legislature finds that a recurring  
5 miscalculation of refunds provided to the sponsors of retrospective  
6 rating plans has depleted the industrial insurance accident fund of  
7 more than one hundred million dollars, and perhaps as much as one  
8 hundred fifty million dollars, with the participants in the  
9 retrospective rating plans receiving the benefit of that  
10 miscalculation. In some cases, those overpayments to the sponsors of  
11 retrospective rating plans have been returned to employer members of  
12 those plans and in some cases have been used to fund the activities of  
13 the sponsors of those plans. As the premiums paid by employers into  
14 the accident fund are based in part upon the solvency of the fund, the  
15 legislature finds that overpayments have caused the accident fund to  
16 contain fewer assets than it otherwise would contain, requiring base  
17 premiums to be set at a level higher than would otherwise be  
18 necessary, and further causing the employers who are not members of a  
19 retrospective rating plan to subsidize retro members by inflating the  
20 amount of retro refunds beyond what was merited by the experience of  
21 retro member employers.

22 The legislature further finds that although the overpayment by the  
23 department of labor and industries was not intentional, the error  
24 resulting in the overpayment was not identified in the numerous  
25 reviews and analyses that have been conducted in the fifteen years  
26 since the erroneous calculations began. The legislature finds that  
27

1 additional evaluations and increased transparency of the retrospective  
2 rating system are needed.

3  
4 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.18 RCW  
5 to read as follows:

6 The legislature finds that the primary purposes of the  
7 retrospective rating program created in this chapter are increasing  
8 workplace safety, preventing accidents, and improving worker outcomes.  
9 The legislature finds that retrospective rating refunds are provided  
10 from the industrial insurance accident account, and that the use of  
11 Title 51 funds to improve workplace safety, prevent accidents, and  
12 improve injured worker outcomes are appropriate uses of such funds.  
13 The legislature further finds that any retrospective rating refunds  
14 not used to administer the retrospective rating group or to support  
15 the purposes of the retrospective rating program belong to and should  
16 be returned to the employer members of each retrospective rating  
17 group, with the sole exception that individual members may annually  
18 authorize use of retrospective rating refunds for purposes unrelated  
19 to worker safety and accident prevention, the primary purposes of the  
20 retrospective rating program, similar to the annual authorization  
21 required from the members of union organizations. The legislature  
22 therefore intends to allow and encourage retrospective rating group  
23 sponsoring entities to use retrospective rating refunds to create and  
24 maintain programs that improve workplace safety, prevent accidents,  
25 and improve worker outcomes while distributing the remainder of the  
26 refund to employer members of the group, subject to the optional  
27 annual authorizations by the members of each group. To restore public  
28 confidence in the use of retrospective rating funds, the legislature  
29 intends to make information concerning the sponsoring entities'  
30 administration of the program publicly available.

31  
32 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.18 RCW  
33 to read as follows:

34  
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1 Beginning January 1, 2010, and continuing for five consecutive  
2 years, the department shall:

3 (1) Conduct an annual actuarial review of the retrospective rating  
4 program. The actuarial review must include an examination of the  
5 method used to calculate retrospective premiums, refunds, and  
6 assessments, an examination of the impact retrospective rating refunds  
7 and assessments have on the accident fund, and an examination of any  
8 other factors necessary to conduct a thorough actuarial review.

9 (2) By December 31st of each year in which an actuarial review is  
10 conducted, report the contents of the review to the appropriate  
11 committees of the legislature.

12  
13 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.18 RCW  
14 to read as follows:

15 (1) With respect to refunds made by the department to a sponsor of  
16 a retrospective rating group on or after the effective date of this  
17 section:

18 (a) The sponsoring entity must distribute the retrospective rating  
19 refund or adjustment to employers in the retrospective rating group  
20 based on a distribution plan, less any amount retained by the  
21 sponsoring entity, within a time period selected by the sponsoring  
22 entity and set forth in the distribution plan. The distribution plan  
23 may not authorize a sponsoring entity to retain any portion of a  
24 refund or adjustment, except as authorized by this section. This  
25 distribution plan shall be provided to the department upon enrollment,  
26 and annually to the members of the retrospective rating group. The  
27 department shall make the distribution plan publicly available,  
28 excluding any financial information specific to individual employer  
29 members.

30 (b) The sponsoring entity may retain a portion of the refund for  
31 reasonable administrative costs. When any portion of the refund is  
32 distributed to the employers in the retrospective rating group, the  
33 sponsoring entity shall disclose to such employers and to the  
34 department the amounts of all administrative costs for which it has

1 retained any portion of the refund and the specific purposes for which  
2 those costs were incurred.

3 (c) The sponsoring entity may retain a portion of the refund for  
4 costs directly related to the development and implementation of a  
5 safety plan to increase workplace safety and to prevent accidents.  
6 The safety plan shall be submitted to the department annually. The  
7 department shall develop rules to define the required elements of a  
8 retrospective rating safety plan.

9 (d) The sponsoring entity may retain a portion of the refund for  
10 costs directly related to claims assistance provided to its member  
11 employers.

12 (e) The sponsoring entity may retain a portion of the refund to  
13 establish and maintain reserves for the sole and exclusive purpose of  
14 covering the costs of future potential retrospective rating  
15 assessments and an amount of reserves necessary to protect against  
16 future penalties or other unexpected retrospective rating costs  
17 incurred during the same or a subsequent coverage year.

18 (f) The sponsoring entity must keep a detailed list of costs  
19 related to (b) through (e) and of this subsection and report this list  
20 to the department and to employers in the retrospective rating group  
21 at the time the retrospective rating refunds or adjustments are  
22 distributed to members of the group.

23 (g) Any amounts retained by a sponsoring entity under (b) through  
24 (e) of this subsection shall be used solely for the purposes described  
25 in those subsections, and may not be used directly or indirectly for  
26 any other purpose.

27 (h) In addition to the amounts that a sponsoring entity may retain  
28 under subsections (b) through (e), the sponsoring entity may retain a  
29 portion of the retrospective rating refund or adjustment due an  
30 employer member if the member has provided a written authorization  
31 allowing the entity to retain a portion of the refund or adjustment  
32 due the employer member. Any authorization provided by an employer  
33 member shall be effective for a period not to exceed one year. If a  
34 sponsoring entity retains funds due the employer member under this

1 subsection, the sponsoring entity must notify the employer member that  
2 additional funds have been retained by the sponsoring entity, and  
3 inform the employer member of the amount withheld from the employer  
4 member under this subsection. The department shall develop a form to  
5 be separately executed by any employer member authorizing the  
6 retention of funds under this subsection, which form shall  
7 (i)authorize the retention of either a percentage of the member's  
8 refund or a fixed dollar amount, and (ii)inform the member that the  
9 authorization is irrevocable for one year. The sponsoring entity  
10 shall use the form developed by the department or a form prepared by  
11 the sponsoring entity that is consistent with this subsection and has  
12 been approved by the department.

13 (i) Any amounts retained by a sponsoring entity under subsection  
14 (h) may be used by the sponsoring entity for any legal purpose, even  
15 if such purpose is unrelated to worker safety and accident prevention.

16 (2) The group must comply with subsection (1) of this section to  
17 be approved by the department for future enrollment.

18

19 **Sec. 5.** RCW 51.18.030 and 1999 c 7 s 4 are each amended to read  
20 as follows:

21 (1) Entities which sponsored retrospective rating groups prior to  
22 July 25, 1999, may not sponsor additional retrospective rating groups  
23 in a new business or industry category until the coverage period  
24 beginning January 1, 2003.

25 (2) For retrospective rating groups approved by the department on  
26 or after July 25, 1999, the sponsoring entity may not propose another  
27 retrospective rating group in a new business or industry category  
28 until the minimum mandatory adjustment periods required by the  
29 department for the first two coverage periods of the last formed  
30 retrospective rating group are completed.

31 (3) Subsections (1) and (2) of this section do not prohibit a  
32 sponsoring entity from proposing to:

33 (a) Divide an existing retrospective rating group into two or more  
34 groups provided that the proposed new groups fall within the same

1 business or industry category as the group that is proposed to be  
2 divided; or

3 (b) Merge existing retrospective rating groups into one business  
4 or industry category provided that the proposed merged groups fall  
5 within the same business or industry category as the groups that are  
6 proposed to be merged.

7 (4) Under no circumstances may a sponsoring entity propose  
8 retrospective rating groups in multiple business or industry  
9 categories in the same application to the department.

10 (5) An insurer, insurance broker, agent, or solicitor may not:

11 (a) Participate in the formation of a retrospective rating group;  
12 or

13 (b) Sponsor a retrospective rating group.

14 (6) A sponsoring entity may not require a participating member or  
15 applicant to: (a) agree to reenroll in the group's future coverage  
16 period, (b) maintain membership in the sponsoring entity or any other  
17 organization beyond the coverage period, which includes the three year  
18 period during which further refunds and assessments may be made, or  
19 (c) contribute funds to the sponsoring entity or any other  
20 organization in excess of the amounts authorized by this act."

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EFFECT: Requires disclosure of funds retained by retrospective ratings  
sponsor groups. Allows retrospective ratings groups to retain funds for  
operation of the retrospective ratings programs and for purposes unrelated  
to workplace safety and injury prevention upon consent of their members.