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**Commerce & Labor Committee**

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**SSB 5992**

**Brief Description:** Modifying self-insurer assessments under the second injury fund.

**Sponsors:** Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Kohl-Welles and Parlette).

**Brief Summary of Substitute Bill**

- Requires experience rating of industrial insurance Second Injury Fund assessments for self-insurers.

**Hearing Date:** 3/23/05

**Staff:** Chris Cordes (786-7103).

**Background:**

Second injury funds were created in most states' workers' compensation laws to encourage employers to hire workers who had suffered a previous injury. In its 1972 report, the National Commission on State Workmen's Compensation Laws stated that "[a] second-injury or subsequent injury fund within the workmen's compensation system insures that a handicapped worker who then subsequently suffers a work-related injury or disease will receive full compensation to cover the resulting impairment. At the same time, the employer will be charged only for the benefits that are associated with the second injury."

In Washington, the Second Injury Fund (Fund) is used for three purposes:

- Benefit Costs for Previously Disabled Workers. A worker with a previous disability may suffer a further disability from a covered on-the-job injury. If the combined effect of the previous disability and the further disability results in total and permanent disability, the employer's account is charged only for the accident cost attributable exclusively to the second injury. The Fund covers the remainder.
- Preferred Worker Benefit Costs. The Fund covers all benefits paid to "preferred workers" for new claims for injuries that occur within three years of employment of such workers. A "preferred worker" is a person who: (1) has sustained injuries that prevent the worker from returning to work with his or her former employer and that substantially impair the likelihood of his or her reemployment with other employers; or (2) has received time-loss for at least 14 consecutive days and has a developmental disability.

- **Job Modification Costs.** The Fund covers the cost of assisting employers in modifying an injured workers' previous job or a new job in order to return the injured worker to gainful employment. Under the statute, the Department of Labor and Industries (Department) may pay costs of up to \$5000 per worker per job modification from the Fund.

Payments for these costs are not charged to the accounts of the employer whose worker was injured, but instead are paid through premiums or assessments. The Fund, along with other workers' compensation funds, is administered by the Director of the Department.

The Fund contains two accounts: the State Fund Account and the Self-Insured Account. The State Fund Account pays all Second Injury Fund costs attributable to state fund claims. All employers insured by the State Fund share these costs through a flat percentage assessment built into Accident Fund premium rates. The moneys needed to pay state fund second injury costs are transferred from the Accident Fund to the Second Injury Fund.

The Self-Insured Account pays all second injury costs attributable to self-insured claims. The assessments that self-insurers pay to cover these costs are required, by statute, to be imposed under rules adopted by the Department and to be in the proportion that the payments made from the Fund on account of self-insured claims bear to the total sum of payment from the Fund.

#### **Summary of Bill:**

The basis for assessing self-insurers for their share of Second Injury Fund (Fund) payments is revised. The assessment for each self-insurer must be experience rated, but the aggregate amount assessed must continue to be in the proportion that the payments made from the Fund on account of self-insured claims bear to the total sum of payment from the Fund.

The experience rating factor must give equal weight to:

- (1) the ratio of Fund expenditures made for the self-insurer's claims to the total expenditures by the Fund for all self-insurers in the prior three fiscal years; and
- (2) the ratio of the self-insurer's total workers' compensation claim payments to the total workers' compensation payments made by all self-insurers for the prior three fiscal years.

The weighted average of these two ratios is divided by the second ratio to obtain the experience factor.

"Expenditures made by the Second Injury Fund" is defined to exclude any subsequent expenditures or adjustments for pensions on an entitlement that was established outside the three-year experience period.

These provisions apply to self-insurer Fund assessments that are imposed on or after July 1, 2009.

**Rules Authority:** The bill modifies the Department of Labor and Industries' rule-making requirements related to self-insurer assessments for the Second Injury Fund.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.