

# HOUSE BILL REPORT

## ESSB 5920

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**As Reported by House Committee On:**  
Commerce & Labor

**Title:** An act relating to a pilot program for vocational rehabilitation services.

**Brief Description:** Establishing a pilot program for vocational rehabilitation services.

**Sponsors:** Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Kohl-Welles, Keiser, Shin and Rasmussen; by request of Governor Gregoire).

**Brief History:**

**Committee Activity:**

Commerce & Labor: 3/22/07, 3/27/07 [DP].

### Brief Summary of Engrossed Substitute Bill

- Creates an industrial insurance vocational rehabilitation pilot program from January 1, 2008, until June 30, 2013.
- Increases allowable costs for vocational rehabilitation plans to \$12,000 and increases time for retraining to two years.
- Establishes time frames for the vocational plan development process so that vocational plan development does not extend beyond 90 days without good cause, as determined by the Department of Labor and Industries.
- Creates an option for workers who, after vocational plan development, decline to participate in an approved vocational plan.
- Addresses issues related to vocational plan interruption.
- Contains provisions related to future vocational assistance that limit the time and allowable costs for vocational rehabilitation in certain subsequent or re-opened claims.

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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.*

## HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member and Crouse.

**Staff:** Sarah Beznoska (786-7109).

### **Background:**

#### Industrial Insurance Act

One of the stated primary purposes of Washington's Industrial Insurance Act (Act) is to enable an injured worker to become employable at gainful employment. The Department of Labor and Industries (Department) pays, or directs self-insured employers to pay, the costs of vocational rehabilitation services when these services are necessary and likely to enable the injured worker to become employable at gainful employment. Costs are chargeable to a state fund employer's cost experience. Under Department rules, an injured worker is employable if the worker has the skills and training necessary in the labor market to be capable of performing and obtaining gainful employment on a reasonably continuous basis, considering age, education, experience, and preexisting limitations or limitations due to the industrial injury.

#### Vocational Rehabilitation

Under Department rules, an ability-to-work assessment is used to determine if an injured worker should receive vocational rehabilitation services. An ability-to-work assessment report must recommend one of the following:

- the injured worker is employable at gainful employment;
- vocational rehabilitation services are necessary and likely to enable the injured worker to become employable at gainful employment; or
- the injured worker is not likely to benefit from vocational services.

If vocational rehabilitation services are necessary and likely to enable the injured worker to become employable at gainful employment, vocational rehabilitation plan development services are authorized to obtain a vocational rehabilitation provider's assistance in producing a vocational rehabilitation plan for the worker. Vocational rehabilitation plan implementation and monitoring services follow plan development. A variety of reporting requirements apply at each step in the process.

Costs for vocational rehabilitation services include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses. Costs may include training fees for on-the-job training and the cost of furnishing tools and equipment for self-employment or re-employment. The cap for these costs is \$4,000 in any 52-week period. A worker may also receive transportation costs. The Department may extend the time frame for

an additional 52 weeks. If a worker is required to reside away from his or her customary residence while undergoing vocational rehabilitation, the reasonable costs of board and lodging must also be paid. A worker undergoing vocational rehabilitation is entitled to continuing time-loss compensation while actively and successfully undergoing vocational rehabilitation.

If a worker refuses or obstructs evaluation or examination for vocational rehabilitation purposes or does not cooperate in reasonable efforts at vocational rehabilitation, the Department or the self-insurer may suspend any further action on any claim of the worker as long as refusal, obstruction, or non-cooperation continues. The Department or self-insurer may reduce, suspend, or deny any compensation for a period of refusal, obstruction, or non-cooperation.

### WorkSource

WorkSource is a joint venture to address employment needs in the state. WorkSource partners include state and local government agencies as well as local community-based organizations that provide a wide range of employment and training-related services. WorkSource Centers provide information, technology, and career services for job seekers.

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### **Summary of Bill:**

The Department of Labor and Industries (Department) is required to create a vocational rehabilitation pilot program from January 1, 2008, until June 30, 2013. The elements of the pilot program apply to vocational plans approved between January 1, 2008, and June 20, 2013.

### **Vocational Rehabilitation Pilot Program**

#### Vocational Initiative Project

The Department must establish a vocational initiative project that includes a partnership between the Department and WorkSource. The Department must place full-time vocational professionals at pilot WorkSource locations. The Department must refer some workers to the vocational professionals at pilot WorkSource locations.

The Department must work with employers in pilot WorkSource areas to market the benefits of on-the-job training programs. The Department also must work with community colleges to reserve slots in high demand programs that may be considered by the Department and private sector vocational professionals for vocational plan development.

The Department will also assist stakeholders in developing additional vocational training programs in various industries including, but not limited to, agriculture and construction. These programs will expand the choices available to injured workers in developing their vocational training plans with the assistance of vocational professionals.

#### Vocational Rehabilitation Subcommittee

The Department must create a vocational rehabilitation subcommittee. Members must be appointed by the Department for at least the duration of the pilot program. The subcommittee must provide the business and labor partnership needed to maintain focus on the intent of the pilot program. The subcommittee must provide consistency and transparency to the development of rules and policies.

The subcommittee must report to the Department at least annually and recommend to the Department and the Legislature any additional statutory changes needed, including extension of the pilot program.

The subcommittee must also provide recommendations for additional changes or incentives for injured workers to return to work with their employer of injury.

#### Vocational Referral, Plan Development, and Approval

When vocational rehabilitation is necessary and likely to enable an injured worker to become employable at gainful employment, the worker must be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. However, an injured worker may not participate in vocational rehabilitation if participation would result in payment of benefits by willful misrepresentation. Benefits paid because of willful misrepresentation may be recouped, consistent with current law.

Some changes are made to the vocational plan development process under the pilot program. At the initial meeting with the worker, the vocational professional assigned to the claim must inform the worker of return-to-work priorities and of the worker's rights and responsibilities. The Department must provide tools to the vocational professional to communicate this and other information to the worker.

On the same date that the worker begins vocational plan development, the Department must also inform the employer, in writing, of the employer's right to make a valid return-to-work offer during the first 15 days of vocational plan development. A valid offer must be for bona fide employment with the employer of injury and must be consistent with any documented physical and mental restrictions of the worker. If a valid offer is made, vocational plan development services and time loss are terminated effective the starting date of the job regardless of whether the worker accepts the offer.

If an employer fails to make a valid return-to-work offer within 15 calendar days, the employer may still make an offer, but the worker may decline the offer and choose to remain in vocational plan development.

During vocational plan development, the worker must, with the assistance of a vocational professional, participate in vocational counseling and occupational exploration, including, but not limited to, identifying possible job goals, training needs, resources, and expenses consistent with the worker's physical and mental status. A vocational rehabilitation plan must be developed by the worker and the vocational professional.

Vocational plans must contain an accountability agreement signed by the worker. The agreement must detail expectations related to progress and other factors that influence successful participation in the plan. Failure to abide by these expectations may result in suspension of vocational benefits.

Formal education included as part of the vocational plan must be for an accredited or licensed program or a non-accredited or unlicensed program approved by the Department. The Department must develop rules for the approval of non-accredited or unlicensed programs.

A vocational plan must be completed and submitted to the Department for approval within 90 days of beginning vocational plan development. The Department may extend the 90 days for good cause and criteria for good cause must be set forth in rule. Frequency and reasons for good cause extensions must be reported to the vocational rehabilitation subcommittee.

#### Vocational Costs and Time Frames

Allowable costs for vocational plans under the pilot program are increased to \$12,000, and must be adjusted annually on July 1 of each year. The annual adjustment applies to plans approved on or after July 1 of the adjustment until the following June 30. The adjustment must be made based on the average percentage change in tuition for the next fall quarter for all Washington community colleges.

The duration of vocational plan is increased to two years. As under current law, if a worker is required to reside away from his or her customary residence while undergoing vocational rehabilitation, the reasonable costs of board and lodging must also be paid and a worker undergoing vocational rehabilitation is entitled to continuing time-loss compensation while actively and successfully undergoing vocational rehabilitation.

#### Worker Options

Following vocational plan development, a worker has two options under the pilot program. Option one is to participate in the vocational plan implemented by the Department or self-insurer. Option two is to decline to participate in the vocational plan and receive other benefits. The worker has 15 days after approval of the plan to select option two.

If the worker chooses option two and declines to participate ("makes an option two selection"), the worker is entitled to six months of time-loss, paid in bi-weekly payments. Payments do not include interest on the unpaid balance and the Department has the discretion to provide the entire amount in a lump sum payment.

If the worker makes an option two selection, the \$12,000 for tuition benefits or educational costs remain available to the worker for five years. The worker must apply to the Department or self-insurer to receive the tuition benefits or educational costs and may use them at an accredited institution or a program from the list approved by the Department for tuition, books, fees, and tools. The amount available for tuition must increase based on the average percentage change in tuition for the next fall quarter at all Washington state community colleges.

If the worker makes an option two selection, the Department must issue an order confirming the option two selection, setting a payment schedule, and terminating time loss payments. The Department must close the claim on the date the worker chooses not to participate.

#### Future Vocational Assistance

A worker who chooses option one or makes an option two selection may be entitled to future vocational assistance if the claim is re-opened based on an aggravation or if the worker files a new claim.

If a worker has successfully completed a vocational plan and has a subsequent new claim, the worker may be entitled to vocational rehabilitation without limitation on costs and time. Consideration of whether vocational rehabilitation is necessary and likely to enable the injured worker to become employable at gainful employment must include consideration of transferrable skills obtained in the vocational plan. If the worker has successfully completed a vocational plan and the same claim is re-opened, the cost and duration for another vocational plan is reduced by the amount of money and time previously expended.

If the worker has previously made an option two selection, the worker may be entitled to vocational assistance in a subsequent claim or re-opening of the same claim, but the future vocational assistance is limited to 18 months (instead of two years) if the subsequent claim or reopening occurs within five years of the option two choice. In addition, if the worker received re-training money as part of the previous option two choice, the costs available in a subsequent claim or re-opening are \$12,000 minus the amount already expended for training. The choice not to participate in vocational training in a subsequent claim or re-opening is not available.

The Director of the Department (Director) has the discretion to provide the worker with vocational assistance not to exceed the \$12,000 and two-year limits regardless of the worker's prior option selection or benefits expended, if the Director determines that vocational assistance would prevent permanent total disability.

#### Vocational Plan Interruption

Vocational plan interruption is defined as an occurrence that disrupts a vocational plan to the extent that the employability goal is no longer attainable within the cost and time limits detailed in the vocational plan. Institutionally scheduled breaks in educational programs or occasional absence due to illness are not vocational plan interruptions.

When vocational plan interruption is beyond the control of the worker, the Department or self-insurer must recommence vocational plan development under the pilot program. If necessary to complete vocational services, the Department or self-insurer may credit any time and money expended prior to the interruption. An interruption is beyond the control of the worker when it is due to closure of an accredited institution, death of an immediate family member, or documented changes in the worker's objective medical condition that prevent further participation in the vocational plan.

When vocational plan interruption is the result of the worker's actions, entitlement to benefits is suspended. If the vocational plan is recommenced under the pilot program, or a new plan is developed, time and money expended prior to interruption is not credited. Interruption is the result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or post-injury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement.

### Costs to the Employer

Generally, vocational costs are chargeable to the employer's cost experience or must be paid by a self-insured employer. However, under the pilot program, state fund vocational costs, including time-loss, may be paid from the Medical Aid Account at the discretion of the Department if:

- the worker previously participated in a vocational plan under the pilot program or made an option two selection under the pilot program;
- the date of injury or disease manifestation is within the period of time used to calculate the state fund employer's experience factor; and
- the subsequent claim is for an injury or occupational disease that resulted from employment and work-related activities beyond the worker's document restrictions.

When paid from the Medical Aid Account, vocational costs are not charged to a state fund employer's cost experience.

### Register

The Department must develop and maintain a register of workers who have been retrained or have chosen one of the vocational options during the pilot program. The register must be kept for at least the duration of the pilot program.

### Study and Review

An independent review and study of the effects of the pilot program must be conducted to determine whether the pilot program has achieved appropriate outcomes at reasonable cost to the system. The review must include, at a minimum, the following:

- a report on the Department's performance with regard to the provision of vocational services;
- the skills acquired by workers who receive retraining services;
- the types of training programs approved;
- whether the workers are employed, at what jobs and wages after completion of the training program and at various times subsequent to their claim closure; and
- the number of demographics of workers who choose option two and their employment and earnings status at various times subsequent to claim closure.

The Department may adopt rules, in collaboration with the vocational rehabilitation subcommittee to further define the scope and elements of the study. The subcommittee must provide input and oversight with the Department with respect to the study.

Reports of the independent researcher are due on December 1, 2010, December 1, 2011, and December 1, 2012.

#### Department Report

The Department must develop a report on the vocational rehabilitation system. The first report must be provided to the Legislature and the vocational rehabilitation subcommittee by December 1, 2009. The report is due annually thereafter until December 1, 2012. The annual report must contain information about workers who have participated in more than one vocational training plan approved under the pilot project and information about the industries in which the workers were employed. The final report must include the Department's assessment and recommendations for further legislation, in collaboration with the vocational rehabilitation subcommittee.

The Department also must report all expenses to the Medical Aid Account that result from the discretionary decision to fund state fund vocational costs from the Medical Aid Account. The expenditures must be separately documented as a medical aid fund expenditure and reported annually to the vocational rehabilitation subcommittee and the Legislature. The report must include the number of claims for which relief to the employer was provided and the average cost per claim. In addition, a report must be provided to the vocational rehabilitation subcommittee and the Legislature showing the annual number of claims and average cost per claim reported by self-insured employers that would otherwise be entitled to reimbursement using the criteria for reimbursement for state fund employers.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2008.

#### **Staff Summary of Public Testimony:**

(In Support of Engrossed Substitute Senate Bill) This bill is the same as the version that passed the House. It creates a pilot project that sets forth a common sense set of reforms that have been needed for a long time. One of the amendments that was made to this bill by the Senate requires the Department of Labor and Industries to work with various stakeholders on options for workers in certain industries and that does require one additional full-time employee. The fiscal note also reflects increased time-loss benefits and some cost shifts.

It took 20 years to get to an agreement that everyone can be proud of. This will make significant differences in the lives of injured workers. The pilot will also allow business and



labor to learn a lot more about good vocational training. This will save costs in the system over time and should create a drop in pension rates over time.

This bill particularly helps workers in the construction industry where current amounts of money and time for retraining do not make many training options available that would allow the worker to re-enter the workforce at a liveable wage job. Increasing the money and time available will open whole new types of work that a re-trained worker will be able to do.

(Opposed) None.

**Persons Testifying:** Peter Bogdanoff, Governor's Executive Policy Office; Vickie Kennedy, Department of Labor and Industries; Jeff Johnson, Washington State Labor Council; and Dave Johnson, Washington State Building and Construction Trades Council.

**Persons Signed In To Testify But Not Testifying:** None.