

# HOUSE BILL REPORT

## HB 3061

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### As Passed Legislature

**Title:** An act relating to claims of insolvent self-insurers under industrial insurance.

**Brief Description:** Addressing claims of insolvent self-insurers under industrial insurance.

**Sponsors:** Representative Condotta.

#### Brief History:

##### Committee Activity:

Commerce & Labor: 1/27/10, 2/2/10 [DP].

##### Floor Activity:

Passed House: 2/10/10, 96-0.

Passed Senate: 3/11/10, 46-0.

Passed Legislature.

#### Brief Summary of Bill

- Requires that the balance of a defaulted self-insured employer's surety must be transferred into the Insolvency Trust Fund when all claims against the employer are closed and the employer has been in default for 10 years.
- Provides that if a self-insured employer is in default or the Department of Labor and Industries has withdrawn an employer's certification, the cost of claims which would otherwise be paid from the Second Injury Fund are instead assessed against the self-insured employer's surety and when the surety is insufficient, the Insolvency Trust Fund.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Crouse, Green, Moeller and Williams.

**Staff:** Joan Elgee (786-7106).

#### Background:

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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.*

Employers must provide industrial insurance through the State Fund administered by the Department of Labor and Industries (Department) or, if qualified, may self-insure. Certain public entities (school districts, educational service districts, and public hospitals) may self-insure as groups.

To be certified by the Department as a self-insurer, an employer must have sufficient financial ability to ensure prompt payment of compensation to its injured workers and must meet other requirements. The Department requires self-insurers to provide surety in an amount determined by the Department to cover the self-insurer's industrial insurance liabilities. The surety can be cash, corporate or governmental securities, a bond, or a letter of credit. The Director of the Department (Director) may withdraw the certification of a self-insurer if the employer no longer meets the requirements of a self-insurer, the deposit is insufficient, or the employer engages in specified acts.

If a self-insurer defaults on any industrial insurance obligation, the Director may take steps to fulfill the defaulting employer's obligations from the surety deposit. If the surety is exhausted, costs are paid from a self-insurers' Insolvency Trust Fund. Private self-insured employers pay an assessment into the Insolvency Trust Fund in proportion to their claim costs.

When an industrial injury results in death or a pension is awarded, a self-insured employer must pay into the Pension Reserve Fund (or provide a bond or annuity) for the costs of the injury. However, when death or permanent total disability is partially caused by a prior injury, pension costs resulting from the prior injury are paid by the Second Injury Fund. In all pension or death cases, the Department must evaluate whether payment should be made from the Second Injury Fund.

**Summary of Bill:**

If a self-insured employer is in default, the Department must transfer the balance of the employer's surety into the Insolvency Trust Fund when all claims against the self-insured employer are closed and the employer has been in default for 10 years.

If a self-insured employer is in default or the Director has withdrawn a self-insured employer's certification, the Department does not evaluate whether payment should be made from the Second Injury Fund in pension or death cases. Instead, in such cases the costs of the pension reserve must first be assessed against the self-insured employer's surety and where the surety is insufficient, the remaining cost must be assessed against the Insolvency Trust Fund.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill strengthens the Insolvency Trust Fund which was put in place to assure workers continue to receive benefits if a self-insured employer goes bankrupt. It also reduces the burden on other self-insured employers, creating greater equity. The bill will alleviate a specific disproportionate impact issue on certain public entities. This is a technical bill which has nothing to do with workers' compensation reform. There is no opposition that proponents are aware of.

(Available for questions) The bill makes cost shifts within the self-insured employer community and no downsides are anticipated.

(Opposed) None.

**Persons Testifying:** (In support) Representative Condotta, prime sponsor; and Clif Finch, Washington Self-Insurers Association.

(Available for questions) Vickie Kennedy, Department of Labor and Industries.

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